

NEWCASTLE UNIVERSITY

TERMS AND CONDITIONS OF PURCHASE FOR SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions:

'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 Contractor pursuant to the Contract, whether orally, or in documentary, electronic or other form, including all (if any) such information held by the Contractor as of the commencement of the Contract.

'Contract' means the contract between the University and the Contractor for the supply and acquisition of the Services consisting of these Terms and Conditions, the Order and any other document which the University and the Contractor have expressly agreed in writing shall be incorporated into the Contract formed in accordance with Condition 2.1;

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

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

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

'Contractor Data' means any data, documents, text, drawings, diagrams, images, sounds and/or other works and materials (together with any database made up of any of those), embodied in any medium that are proprietary to the Contractor and/or licensed by the Contractor from a third party at the Contract Start Date including all modifications, additions and developments made to any of those items;

'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;

'Discretionary Exclusions' means the circumstances set out in regulation 57(2) 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;

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

'FOIA' means 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 legislation;

'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 and/or (iii) strikes, lockouts or industrial disputes;

'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 Contractor:

- (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 Contractor (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 Contractor or any of its assets; (iii) the enforcement of any security over any assets of the Contractor; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of the Contractor;
- (b) the Contractor is unable to pay its debts as they fall due or is insolvent;
- (c) the Contractor ceases to trade or appears, in the reasonable opinion of the University, to be likely to cease to trade; or
- (d) the Contractor 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.

'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 Contractor 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);

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

'Public Contracts Directive' means Directive 2014/24/EC;

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

'Order' means the University's written acceptance of the Contractor's quotation for the supply of services to the University;

'Relevant Personal Data' has the meaning given to it in Condition 11.6.2;

'Relevant Sub-Contractor(s)' means any sub-contractors engaged or to be engaged by the Contractor 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;

'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;

'Serious Infringement' means a contract for the Services should not have been awarded by the University to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 TFEU;

'Service Variation Notice' means a written notice issued by the University to the Contractor to vary the Services in accordance with Condition 18.1 or modify the quality or quantity of Minor Works in accordance with paragraph 7 of the Minor Works Annex;

'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;

'Substantial Modification' means a modification to the 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;

'TFEU' means the Treaty on the Functioning of the European Union;

'Treaties' means the Treaty on European Union and TFEU.

'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 and a reference to European regulation includes any delegated or implementing acts made under that European regulation.
- 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 Conditions are the only terms and conditions on which the University will purchase any services from the Contractor and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Contractor 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 Contractor when tendering 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 1.8.1 being the highest precedence):
- 1.8.1 these Terms and Conditions;
 - 1.8.2 the Order;
 - 1.8.3 any other document which is incorporated into the Contract.

2. **APPOINTMENT**

- 2.1 The Contractor's quotation constitutes an offer by the Contractor to supply the 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 Services by the Contractor to the University on these Terms and Conditions will be formed when the University accepts the quotation by issuing the Order to the Contractor. 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 Contractor to perform the Services in accordance with the Contract.
- 2.3 Commencement of performance of the Services will be deemed conclusive evidence of the Contractor's acceptance of these Terms and Conditions.

- 2.4 The Contractor warrants on an ongoing basis that at all times all information provided by or on behalf of the Contractor to the University in connection with a tender for any of the Services is complete and accurate.

3. **PRICE AND PAYMENT**

- 3.1 With the exception of expenses that are stated in the Order as payable by the University that are properly incurred and evidenced by the Contractor and approved by the University in writing in advance, the Contract Prices are the only monies to be paid by the University in connection with the performance of the Services which will be inclusive of all costs and expenses incurred by the Contractor including all insurance, travel, accommodation and subsistence expenses.
- 3.2 No increase in the Contract Price 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 Contractor.
- 3.3 Subject to the supply of the Services in accordance with the Contract, the Contractor shall invoice the University for the Contract Price in the manner and at the times set out in the Contract. In the absence of any such provisions in the Contract, the Contractor will invoice the University for the Contract Price for the Services following completion of performance and/or acceptance of the Services (whichever the later). All invoices must be sent to the invoice address indicated on the Order and must quote the full purchase order number of the Order.
- 3.4 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 Contractor's entitlement to payment. Value Added Tax, where applicable, shall be shown separately on all invoices, as a strictly net extra charge. The Contractor shall, if so requested by the University, furnish such information as may reasonably be required by the University as to the amount of Value Added Tax chargeable on the value of the Services supplied in accordance with the Contract and payable by the University to the Contractor in addition to the Contract Price.
- 3.5 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.
- 3.6 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 Contractor of its reasons for withholding any amount under this Condition 3.6. Should a dispute arise in relation to an invoice, the parties will meet within seven days of the University notifying the Contractor of its reasons for withholding the relevant amount and each party will act in good faith to attempt to resolve the dispute.
- 3.7 The Contractor is not discharged from performance of its obligations by reason only that some or all of the Contract Price is withheld under Condition 3.6. No payment made by the University will constitute acceptance or approval by the University of the Services or otherwise prejudice any rights or remedies which the University may have against the Contractor including the right to recover any amount overpaid or wrongfully paid to the Contractor.

- 3.8 The University may set off against the Contract Price any sums owed to it by the Contractor, in connection with the Contract or any other agreement entered into by the parties.
- 3.9 If any sum payable under the Contract is not paid on or before the due date for payment the Contractor 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 3.6 for any period during which the payment of such sum remains disputed. The parties agree that this Condition 3.9 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:
- 3.9.1 the interest rate is greater than the interest rate available to the Contractor in respect of cash on deposit which is immediately available; and
- 3.9.2 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.
- 3.10 The provisions of Condition 3.9 are in lieu of statutory interest, which shall not accrue on any late payments.

4. **PERFORMANCE**

- 4.1 The Contractor shall perform the Services on the performance date(s) set out in the Contract. The University may, by written notice, require the Contractor 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.
- 4.2 The quantity, quality and description of the Services shall be as specified in the Contract and/or in any specification supplied.
- 4.3 Time of performance of the Services (including delivery of any goods) is of the essence of the Contract. Notwithstanding this:
- 4.3.1 if for any reason the University requests performance to be delayed, the Contractor shall agree to such request at no extra cost to the University and the provisions of this Condition 4 shall apply to any such revised date for performance; and
- 4.3.2 the Contractor 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 Contractor will use all reasonable endeavours to minimise the period and impact of any such delay and will promptly provide written details of the steps.
- 4.4 Where the date of performance of the Services is not specified in the Contract, the Contractor will perform the Services within any timescales reasonably requested by the University in writing.
- 4.5 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.

- 4.6 The Contractor 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.
- 4.7 The Contractor 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 contractors.
- 4.8 The Contractor shall take every practicable precaution not to damage or injure any property or persons.

5. **MINOR WORKS**

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.

6. **CONTRACTOR'S WARRANTIES**

- 6.1 The Contractor warrants and represents to the University that it has full right, power, capacity and authority to perform the Services and it is fully qualified, equipped, financed and organised to perform the Contract.
- 6.2 The Contractor warrants to the University that the Services:
 - 6.2.1 will conform in every respect with the provisions of and requirements set out in the Contract;
 - 6.2.2 will comply with all standards of performance specified in the Contract;
 - 6.2.3 will be performed:
 - 6.2.3.1 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;
 - 6.2.3.2 by appropriately qualified and trained personnel having experience in the provision of services of a similar type and nature of the Services;
 - 6.2.3.3 in a professional and ethical manner consistent with the University's commitment to equal opportunities and the Equality Act 2010;
 - 6.2.3.4 to the reasonable satisfaction of the University;

- 6.2.3.5 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;
 - 6.2.3.6 in accordance with all applicable law including statutory requirements, regulations, EU regulations that relate in any way to the Services and/or the Premises where the Services will be performed;
 - 6.2.4 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 Contractor by the University (including any request to leave immediately any of the Premises).
- 6.3 The Contractor warrants that any goods supplied as part of the Services under the Contract:
 - 6.3.1 will be of satisfactory quality and fit for any purpose held out by the Contractor or made known to the Contractor at the time the Order is placed;
 - 6.3.2 will correspond with their description and with any relevant specification or sample;
 - 6.3.3 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;
 - 6.3.4 will be free from defects in design, material and workmanship; and
 - 6.3.5 will comply with all applicable law including statutory requirements, regulations, EU 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.
- 6.4 The Contractor will, in performing the Services:
 - 6.4.1 fully co-operate with the University's agents, representatives and contractors;
 - 6.4.2 ensure that it has and maintains all licences, permissions and consents required from time to time;
 - 6.4.3 comply with all health and safety and security policies that apply at the University's premises and all lawful and reasonable directions of the University;
 - 6.4.4 comply with all statutory requirements, regulations, bye-laws and EU directives and regulations relating to the performance of the Services; and
 - 6.4.5 not do or omit to do anything which may cause the University to lose any licence, permission or consent or to be in breach of any applicable law.

7. **RISK AND OWNERSHIP**

- 7.1 Risk of damage to or loss of the goods supplied under the Contract shall pass to the University upon the later of delivery of the goods to the University's premises or completion of the Services to which the goods relate in accordance with the Contract.
- 7.2 Ownership of any goods shall pass to the University upon delivery, unless payment for any goods and/or the Services to which the goods relate is made prior to delivery, when ownership shall pass to the University once payment has been made.

8. **CONTRACTOR'S STATUS**

- 8.1 In carrying out the Services, the Contractor shall be acting as principal and not as the agent of the University. Accordingly:
- 8.1.1 the Contractor 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 Contractor is acting as the agent or employee of the University; and
- 8.1.2 nothing in the Contract shall impose any liability on the University in respect of any liability incurred by the Contractor to any other person.
- 8.2 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.
- 8.3 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 Contractor will indemnify the University against all losses, liabilities, costs, damages and expenses 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, in each case 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.

9. **OWNERSHIP OF DOCUMENTS, DESIGN AND MATERIALS**

- 9.1 Save for any Intellectual Property Rights in Contractor Data, any Intellectual Property Rights which come into existence as a result of the performance by the Contractor of the Services, including the Deliverables, will be the property of the University.
- 9.2 The Contractor hereby assigns to the University free from all charges and other encumbrances all right, title and interest in and to all Intellectual Property subsisting in Rights 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.
- 9.3 At the request and expense of the University, the Contractor shall and shall procure that their personnel shall:

- 9.3.1 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;
 - 9.3.2 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 Clause 9, and decisions as to the procuring of a patent or other appropriate protection and exploitation shall be in the sole discretion of the University.
- 9.4 The Contractor shall clearly identify all Contractor Data which are proposed to be included in the Deliverables and in such cases the Contractor shall not include Contractor Data in the Deliverables without the prior written consent of the University. The Contractor 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.
- 9.5 The Contractor 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.
- 9.6 The Contractor warrants that neither the Deliverables nor the provision or receipt of the Services shall infringe any third party Intellectual Property Rights.
- 9.7 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 (**'Indemnified Items'**) infringes the Intellectual Property Rights of that third party or of another person (**'IPR Claim'**), the Contractor will indemnify each Protected Party against all losses (including without limitation all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis and including without limitation legal and other professional costs and costs of enforcement), damages and expenses 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 (including without limitation all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis and including without limitation legal and other professional costs and costs of enforcement), 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, in each case arising out of or in connection with that IPR Claim. The **'Protected Parties'** means the University and all of its agents, officers and employees.
- 9.8 If there is an IPR Claim:
 - 9.8.1 the University will as soon as reasonably practicable notify the Contractor of the IPR Claim, provided that the giving of such notice will not be a condition precedent to the liability of the Contractor under Condition 9.7;
 - 9.8.2 the Contractor 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 Contractor 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

- 9.8.3 at the cost and expense of the Contractor, the University will take all reasonable steps to co-operate with the Contractor in the defence or settlement of such IPR Claim.
- 9.9 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 Contractor to promptly (and at the Contractor's cost and expense) either:
- 9.9.1 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
- 9.9.2 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.
- 9.10 All materials, equipment, tools, dies and moulds supplied by the University to the Contractor will at all times:
- 9.10.1 be and remain the exclusive property of the University;
- 9.10.2 be held by the Contractor in safe custody at its own risk;
- 9.10.3 be maintained and kept in good condition by the Contractor until returned to the University;
- 9.10.4 not be disposed of other than in accordance with the University's written instructions;
- 9.10.5 not be used otherwise than as authorised by the University in writing; and
- 9.10.6 be returned to the University on demand.
- 9.11 The Contractor 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.
- 9.12 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 Contractor shall be made good at the Contractor's expense.

10. **CONTRACTOR'S PERSONNEL**

- 10.1 The Contractor shall take the steps reasonably required by the University to prevent unauthorised persons being admitted to the Premises. If the University gives the Contractor 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 Contractor shall take all reasonable steps to comply with such notice and if required by the University, the Contractor 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 Contractor of its duties under the Contract.

- 10.2 If and when instructed by the University, the Contractor shall give the University a list of names and addresses of all persons who are or maybe 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.
- 10.3 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 Contractor has furnished the information or taken the steps required of him by this condition, shall be final and conclusive.
- 10.4 The Contractor shall bear the cost of any notice, instruction or decision of the University under this Condition 10.

11. **OBSERVANCE OF REGULATIONS**

- 11.1 The Contractor'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 Contractor 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 In this Condition:
- 11.3.1 **'Data Protection Legislation'** means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, corresponding Directives 95/46/EC and 2002/58 of the European Parliament and any other applicable data protection and privacy laws (in any jurisdiction, whether inside or outside the European Economic Area) relating to the processing of personal data under the Contract including all related regulations and codes of practice, all as amended or replaced from time to time;
- 11.3.2 the terms **'data subject'**, **'data controller'** (or **'controller'**), **'data processor'** (or **'processor'**) and **'personal data'** shall be as defined in Data Protection Legislation;
- 11.3.3 **'Individual'** means a data subject of the Relevant Personal Data;
- 11.3.4 **'Purpose'** means (in relation to the Contractor) the provision of the Services;
- 11.3.5 **'Relevant Personal Data'** means personal data:
- 11.3.5.1 made available by or on behalf of the University to the Contractor for the purposes of the Contract;
- 11.3.5.2 obtained by the Contractor during the course of providing the Services; and/or
- 11.3.5.3 generated in the course of providing the Services.

- 11.4 The following provisions apply where the Contractor is a data controller:
- 11.4.1 the parties express their intention that each of them shall process Relevant Personal Data independently of the other and that they shall not determine the purpose or means of processing jointly or in common with each other;
 - 11.4.2 the Contractor shall ensure that it complies with the provisions and obligations imposed on it by Data Protection Legislation and shall, in accordance with Data Protection Legislation applicable from time to time in England:
 - 11.4.2.1 ensure that its processing of Relevant Personal Data is notified to the Information Commissioner and that its entry in the Information Commissioner's register of data controllers is kept up to date;
 - 11.4.2.2 provide a privacy notice to Individuals setting out its intended processing of Relevant Personal Data;
 - 11.4.2.3 determine and record the legal basis for its processing of Relevant Personal Data and any sensitive Relevant Personal Data pursuant to the Contract;
 - 11.4.2.4 use the Relevant Personal Data for the Purpose and no other purpose and not further process the Relevant Personal Data in any manner incompatible with that Purpose;
 - 11.4.2.5 ensure that Relevant Personal Data generated by the Contractor or processed pursuant to the Services and/or disclosed to the University are adequate, relevant and not excessive;
 - 11.4.2.6 ensure that Relevant Personal Data are accurate and where necessary, kept up to date and update Relevant Personal Data promptly if the University or an Individual notifies the Contractor of an update;
 - 11.4.2.7 ensure that Relevant Personal Data are not kept for longer than is necessary for the Purpose;
 - 11.4.2.8 process Relevant Personal Data in accordance with the rights of Individuals under Data Protection Legislation;
 - 11.4.2.9 take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; the Contractor is solely responsible for ensuring that appropriate security measures are in place for all parts of the Services to protect all Relevant Personal Data as further set out in Conditions 11.6.3, 11.6.4, 11.6.5 and 11.6.6;
 - 11.4.2.10 ensure that any transfers of Relevant Personal Data comply with the requirements in or pursuant to Condition 11.6.7.
- 11.5 The following provisions apply where the Contractor is the University's data processor:
- 11.5.1 the University (as between the University and the Contractor) shall determine the purpose for which and the manner in which all Relevant Personal Data shall be

processed by the Contractor while performing the Services: the purpose is determined by the University to be the Purpose and the manner is delegated to the Contractor;

- 11.5.2 the Contractor shall process the Relevant Personal Data in accordance with instructions from the University and, unless otherwise expressly notified in writing to the Contractor by the University, the Contractor shall only process the Relevant Personal Data to the extent strictly necessary for the Purpose, which processing shall be deemed to be on the University's instructions;
- 11.5.3 the Contractor shall take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; the Contractor is solely responsible for ensuring that appropriate security measures are in place for all parts of the Services to protect all Relevant Personal Data as further set out in Conditions 11.6.3, 11.6.4, 11.6.5 and 11.6.6; and
- 11.5.4 the Contractor shall make available to the University all information necessary to demonstrate the Contractor's compliance with the applicable requirements of this Condition 11 and any requirements under Data Protection Legislation, and shall, on and in accordance with the University's written requests, permit and contribute to audits and/or inspections by the University or its representative(s).

11.6 The following provisions apply to the Contractor whether the Contractor is the University's data processor or a data controller:

- 11.6.1 the Contractor shall not cause the University to be in breach of any part of the Data Protection Legislation, whether by reason of an act or omission by the Contractor, its personnel or sub-contractors. The Contractor shall ensure that its personnel are aware of the data protection and privacy requirements in this Condition and shall impose the obligations and restrictions in this Condition on its sub-contractors or such other obligations, restrictions or conditions as the University stipulates in respect of its consent to sub-contracting under Condition 21. The Contractor shall procure that each of its sub-contractors imposes on the sub-contractor's own sub-contractors the obligations in the previous two sentences of this Condition 11.6.1 and the obligation in this sentence;
- 11.6.2 where the parties share Relevant Personal Data, they may set out in a protocol the technical and organisational measures required and details of their roles and responsibilities with regard to compliance with Data Protection Legislation (including by way of non-exhaustive example, to set out the secure means for the transmission of Relevant Personal Data between them);
- 11.6.3 the Contractor shall establish and maintain all appropriate technical and organisational measures against the unauthorised or unlawful processing of the Relevant Personal Data and/or accidental loss or destruction of, or damage to, the Relevant Personal Data (any such event being a '**Data Protection Event**');
- 11.6.4 the Contractor shall ensure that the measures adopted under Condition 11.6.3 implement a level of security appropriate to the harm that might result from a Data Protection Event and the nature of the Relevant Personal Data, having regard to the state of technological development and the cost of implementing the measures;

- 11.6.5 the Contractor shall take reasonable steps to ensure the reliability of its representatives and personnel who have access to the Relevant Personal Data. This includes informing them of the need to avoid and prevent Data Protection Events, ensuring they are legally obliged to keep the Relevant Personal Data confidential and providing them with appropriate training to ensure compliance with Data Protection Legislation;
- 11.6.6 the Contractor shall notify the University as soon as reasonably practicable (and in any event within 24 hours) of any Data Protection Event. Notification should be made to the breach notification email address notified to the Contractor by the University, or if no email address has been notified, to its contact at the University. The Contractor shall at all times co-operate fully with the University and follow the University's reasonable instructions in relation to the Data Protection Event. The Contractor shall provide information reasonably requested by the University, take all action required to contain the Data Protection Event, recover the Relevant Personal Data and prevent recurrence of the Data Protection Event. The Contractor shall submit its compromised systems to any audits or tests reasonably required by the University and shall remedy any deficiencies identified, promptly and at its own cost. The Contractor will not make any public announcement about the Data Protection Event without the University's prior written approval of the content of that announcement;
- 11.6.7 the Contractor shall not cause or permit the Relevant Personal Data to be transferred outside the European Economic Area without the prior written consent of the University. If the University does so consent, the Contractor shall ensure, as an independent data controller, that the transfer complies with Data Protection Legislation, unless another approach is stipulated by the University in respect of its consent to transfer in which case the Contractor shall comply with that other approach (including, where the Contractor is based outside the European Economic Area, entering into a European Commission standard contractual clause agreement);
- 11.6.8 the Contractor shall promptly, and in any event no later than reasonably required in order to enable the University to fulfil its duties under Data Protection Legislation:
- 11.6.8.1 inform the University of any enquiries or communications (including subject access requests) from Individuals and/or regulatory bodies (including the Information Commissioner's Office) relating to their Relevant Personal Data and/or its processing; and
- 11.6.8.2 provide such information, documents and other cooperation as requested by the University for the purpose of responding to any such Individual or regulatory body or otherwise to comply with duties under Data Protection Legislation;
- 11.6.9 the Contractor shall, at the University's option which the Contractor shall request, securely return or securely delete the Relevant Personal Data on expiry or termination of the Contract, unless:
- 11.6.9.1 the Contractor is required by law to retain the Relevant Personal Data; or

11.6.9.2 the University agrees in writing to the Relevant Personal Data being retained by the Contractor, including pursuant to a new contract between the parties; and

11.6.10 the Contractor shall ensure full compliance of the Services with The Privacy and Electronic Communications (EC Directive) Regulations 2003 including regulation 6 (Confidentiality of communications).

11.7 In addition to any other remedy available to the University, the Contractor shall indemnify, defend and hold harmless the University, its servants or agents in full and on demand (with no duty to mitigate their losses) from and against and all liabilities, claims, demands, damages, compensation, monetary penalties, administrative sanctions, losses, costs (on a full indemnity basis), expenses, interest, and penalties incurred by them, howsoever arising whether wholly or in part resulting directly or indirectly from the matters listed below, whether or not such losses or the consequences of the matters listed below were in the parties' contemplation or were foreseeable at the date of the Contract:

11.7.1 any breach by the Contractor of Condition 11.6.1 or a breach by a sub-contractor of the Contractor or other third party pursuant to Condition 11.6.1;

11.7.2 any other breach of Condition 11;

11.7.3 any breach by the Contractor of Data Protection Legislation;

11.7.4 any breach of confidence by the Contractor;

11.7.5 any claims, proceedings or regulatory action made, brought or threatened against the University; and/or

11.7.6 the defence or settlement or payment made or other action taken as a result of or in response to any such actual or threatened claim, proceeding or regulatory action,

in relation to information that is subject to the Data Protection Legislation, if such breach or actual or threatened claim(s) or proceeding(s) or or regulatory action would not have arisen but for some act, omission or negligence on the part of the Contractor, its sub-contractors, agents or staff or any other person connected directly to the Contractor (including its personnel or sub-contractors) or connected indirectly to the Contractor (including via its sub-contractors).

If any third party makes a claim or notifies an intention to make a claim or to take regulatory action against the University, which may reasonable be considered likely to give rise to a liability under this indemnity (a "Claim"), the University shall, where it considers it appropriate to do so:

11.7.7 as soon as reasonably possible give written notice of the Claim to the Contractor;

11.7.8 co-operate fully, at the Contractor's cost, with the Contractor and its legal representatives in the investigation and defence of any Claim;

11.7.9 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Contractor (such consent not to be unreasonably conditioned, withheld or delayed) provided that the University may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Contractor, but without obtaining consent) if the

University believes that failure to settle the Claim would be prejudicial to it in any material respect; and

11.7.10 give the Contractor access at reasonable times (on reasonable prior notice) to its premises and offices and to any relevant assets, accounts, documents and records within the power or control of the University, so as to enable the Contractor to examine them and take copies (and the Contractor's expense) for the purpose of assessing and defending the Claim.

11.8 Should there be a change in Data Protection Legislation during the term of the Contract, the parties agree to negotiate in good faith to review and revise or substitute this Condition, any protocol under Condition 11.6.2 in particular, and the Contract more generally, to accommodate any changes required. Where the Contractor acts as a data processor, the Contractor agrees that it shall, if required by the University, enter into any standard contractual clause data processor contract produced by the European Commission or by the relevant data protection supervisory authority.

12. **INDEMNITIES AND INSURANCE**

12.1 The Contractor shall indemnify and keep indemnified in full on an after tax basis, the University, its servants and agents in full against all losses (including special and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses (including legal expenses) that the University, its servants and/or agents do(es) or will incur or suffer, all claims or proceedings made, brought or threatened against the University, its servants and/or agents by any person and all losses (including special and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses (including legal expenses) the University, its servants and/or agents do(es) or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with:

12.1.1 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 Contractor or its employees, agents or sub-contractors;

12.1.2 any default or breach of the Contract by the Contractor or any subcontractor, agent or any person engaged by the Contractor;

12.1.3 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;

12.1.4 any act or omission of the Contractor or its employees, agents or sub-contractors in performing the Services or providing goods, including any injury, loss or damage to persons or to University property caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of the University);

12.1.5 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 Contractor or against the University).

12.2 The Contractor (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 Contractor's potential liabilities in connection with the Services and its performance of its obligations under the Contract.

12.3 Without prejudice to Condition 12.2, the Contractor 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 Contractor of its obligations under the Contract:

12.3.1 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;

12.3.2 employers' liability insurance with a minimum per claim limit of indemnity of not less than £10,000,000; and

12.3.3 any other insurances which the Contractor is required by applicable law to maintain,

and the Contractor 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.

12.4 Upon the University's written request, the Contractor will promptly provide full policy documents that evidence the policies required to be held in accordance with this Condition 12 together with evidence to meet the University's satisfaction of payment of all relevant premiums.

12.5 If the Contractor is in breach of Conditions 12.2 to 12.3 the University may itself insure against any risk that should have otherwise been insured against by the Contractor, 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 Contractor under the Contract or recover such sum or sums from the Contractor as a debt (such debt falling due when the University makes payment of the relevant amount).

13. **CLAIMS UNDER UNIVERSITY INSURANCE**

13.1 In the event that the Contractor 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 Contractor shall:

13.1.1 immediately provide the University with written notice of such accident, damage and/or circumstances;

13.1.2 promptly provide all information and assistance that the University and/or its insurers may request in relation to any related claim; and

13.1.3 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 Contractor to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

14. **DEFAULT**

14.1 In the event of the Contractor failing to carry out any Services in accordance with the Contract, the University shall (without prejudice to any other remedy available) be entitled:

- 14.1.1 to deduct from any account rendered by the Contractor in respect of unsatisfactory Services such sum as the University considers appropriate (acting reasonably);
 - 14.1.2 to have such Services carried out by other persons and in the meantime to debar the Contractor, its servants and agents from the Premises; and
 - 14.1.3 to recover from the Contractor any and all liabilities, losses, damages, costs and expenses incurred in having the Services carried out by other persons and/or obtaining substitute services.
- 14.2 Upon the termination or expiry of the Contract for any reason, the Contractor will promptly on request provide all co-operation, information and assistance as is reasonably requested by the University to facilitate the orderly:
- 14.2.1 handover of the Services to the University and/or any replacement supplier; and/or
 - 14.2.2 performance of related and/or similar services,
- with the minimum interruption and inconvenience to the University and at no charge.
- 14.3 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:
- 14.3.1 for death or personal injury resulting from its negligence;
 - 14.3.2 for its fraud or fraudulent misrepresentation;
 - 14.3.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979; or
 - 14.3.4 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.
- 14.4 Subject to Condition 14.3 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 Contract Prices paid and/or payable under the Contract.
- 14.5 Subject to Condition 14.3, where applicable, the Contractor'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.

15. **TERMINATION AND CONSEQUENCES OF TERMINATION**

- 15.1 The University shall be entitled to terminate the Contract and/or any Services immediately without liability to the Contractor and reserving all rights and remedies available to the University by giving notice to the Contractor at any time if:
- 15.1.1 the Contractor is in material breach of any of its obligations under the Contract and that breach is not capable of remedy; or
 - 15.1.2 the Contractor is in material breach of any of its obligations under the Contract and that breach can be remedied but the Contractor has failed to do so within 30 days of being given notice of such breach; or
 - 15.1.3 the Contractor 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 Contractor will deliver a sub-standard performance during a period of one month or longer immediately after such breach; or
 - 15.1.4 if the Contractor, suffers an Insolvency Event; or
 - 15.1.5 the University reasonably believes that any of the above events is about to occur in relation to the Contractor and notifies the Contractor accordingly.
- 15.2 Notwithstanding the provisions of Condition 15.3 below, the University may terminate the Contract by giving not less than three (3) months' written notice to the Contractor in the event that the University considers any of the following circumstances have arisen:
- 15.2.1 where there is a Substantial Modification;
 - 15.2.2 where any of the circumstances detailed in the Mandatory Exclusions or Discretionary Exclusions apply to the Contractor at the time that a decision to award a contract to the Contractor is made in respect of any tender to which the Contract relates; or
 - 15.2.3 where there is a Serious Infringement.
- 15.3 The Contractor shall notify the University in writing within 10 calendar days of becoming aware of any of the circumstances listed in Conditions 15.2.1 to 15.2.3 above applying.
- 15.4 Subject to Condition 14.3, no termination of the Contractor's engagement under the Contract in accordance with Condition 15.2 shall render the University liable to the Contractor for any claim for loss of profit, loss of fees or other similar losses.
- 15.5 Termination of the Contract howsoever effected does not affect:
- 15.5.1 the rights or liabilities of the parties under this Condition 15 or which have accrued on or before termination; and
 - 15.5.2 the continuance in force of Conditions 1, 2.4, 3.6, 3.8 - 3.10, 5, 6, 7 - 12, 14.1 - 14.3, 15.4, 15.5, 16.5, 18.3, 19, 20, 22 and 24 - 32 and Paragraphs 2.3, 3, 4, 10, 11, 12 of the Minor Works Annex which survive termination of the Contract.

16. **BREAK**

- 16.1 Subject to Conditions 16.2 to 16.5 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 Contractor.

16.2 In the event of such notice being given in accordance with Condition 16.1, the University may at any time before the expiration of the notice direct the Contractor:

16.2.1 where work in relation to all or any part of the Services has not been commenced, to refrain from commencing work; and

16.2.2 to complete in accordance with the Contract all or any of the Services, or any part or component thereof.

16.3 Where the Contract is due to terminate under Condition 16.1 and the University has directed the Contractor to complete Services in accordance with Condition 16.2.2:

16.3.1 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 16.1

16.3.2 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 16.1 and (ii) the date on which all such Services have been completed;

16.4 Where the Contract terminates in part under Condition 16.1 without all Services being successfully performed, the Contract 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 Contract Price:

16.4.1 exceeds the aggregate amount paid to the Contractor on the date of termination, the University shall make a balancing payment to the Contractor of any shortfall; or

16.4.2 is less than the aggregate amount then paid to the Contractor, the Contractor shall refund any payments made by the University that exceed the Contract Price.

16.5 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 Contractor under the Contract shall exceed the total Contract Price.

17. **EQUAL OPPORTUNITIES AND THE EQUALITY ACT 2010**

17.1 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.

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

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

17.4 The Contractor 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.

17.5 The Contractor shall, when required, answer queries raised by the University on matters referred to in this Condition and breach of statutory obligations will entitle the University to immediately terminate the Contract.

17.6 The Contractor shall comply with all of the University's equal opportunities and equality policies. Such policies are available on request.

18. **VARIATION AND ENTIRE AGREEMENT**

18.1 The University reserves the right to vary the Services ordered by giving a Service Variation Notice to the Contractor, should this at any time become necessary. In the event of any variation of the Services, the Contract Prices under the Contract shall be subject to fair and reasonable adjustment to be agreed in writing between the University and the Contractor.

18.2 In the event that the parties have failed to agree a reasonable adjustment to the Contract Prices in accordance with Condition 18.1 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 Condition 30.

18.3 An amendment to the Contract is ineffective unless it is in writing, expressly purports to amend the Contract and is executed by both parties.

18.4 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:

18.4.1 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

18.4.2 nothing in this Condition 18.3 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

19. **AUDIT**

19.1 The Contractor 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 Contractor in connection with the Contract (the '**Retained Records**'). The Contractor will ensure that those records and books of account are sufficient to enable the University to verify the Contractor's compliance with the Contract.

19.2 The Contractor will and will procure that its sub-contractors will at any time whilst the Contractor or the sub-contractor is required to retain Retained Records pursuant to Condition 19.3, 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.

- 19.3 The Contractor will and will procure that its sub-contractors will retain the Retained Records for the longer of:
- 19.3.1 six years from the date on which the Contract expires or is terminated; and
 - 19.3.2 the period of time (if any) required by applicable law.
- 19.4 The Contractor 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 Contractor'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:
- 19.4.1 undertake verifications of the accuracy of the Contract Price or investigate suspected fraud;
 - 19.4.2 undertake verification that the Contractor's obligations are being performed in accordance with the Contract;
 - 19.4.3 assess and verify the Contractor's compliance with all applicable laws; and/or
 - 19.4.4 enable the University to:
 - 19.4.4.1 fully comply with all applicable laws (including any accounting, tax and filing obligations);
 - 19.4.4.2 respond to enquiries raised by any regulatory authority or deal with any investigation by, or order or direction of, any regulatory authority; or
 - 19.4.4.3 deal fully with enquiries, complaints or claims made by third parties.
- 19.5 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 19.4 does not unreasonably delay the performance by the Contractor of its obligations under the Contract and that, where possible, the exercise of those rights is coordinated so as to minimise disruption.
- 19.6 The Contractor 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.

20. **CORRUPT GIFTS**

- 20.1 The Contractor shall, and shall procure that their employees, officer, agents, subcontractors, or anyone else acting on their behalf shall:
- 20.1.1 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;
 - 20.1.2 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;

- 20.1.3 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 20.1, and permit the University to inspect those records as reasonably required;
- 20.1.4 promptly notify the University of:
 - 20.1.4.1 any request or demand for any financial or other advantage received by it; and
 - 20.1.4.2 any financial or other advantage it gives or intends to give
 - 20.1.4.3 whether directly or indirectly in connection with the Contract; and
 - 20.1.4.4 promptly notify the University of any breach of this Condition 20.1.

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

- 20.2 The University may terminate the Contract immediately by giving written notice to that effect to the Contractor if the Contractor is in breach of Condition 20.1.

21. **ASSIGNMENT AND SUBCONTRACTING**

- 21.1 The Contractor 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 Contractor 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 Contractor shall be responsible for all the acts and omissions of its sub-contractors.
- 21.2 Subject to Condition 21.1, the Contractor 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.
- 21.3 During the period during which the Contract remains in force, the Contractor shall notify the University in writing within five calendar days of:
 - 21.3.1 any changes to the information required to be notified to the University in accordance with Condition 21.2 above; and/or
 - 21.3.2 the name contact details and legal representatives of any Relevant Sub-Contractors appointed since the Contract Start Date.
- 21.4 Where the Contractor is required to notify the University in accordance with Conditions 21.3.1 and 21.3.2 it must obtain the written consent of the University to the appointment or continued use of the Relevant Sub-Contractor(s).
- 21.5 In considering whether to grant written consent in accordance with Condition 21.4, the Contractor shall provide the University with a European 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 European Single Procurement

Document provided to it in accordance with this Condition 21.5 does not meet any of the selection criteria that the Contractor is required to meet as part of any tender which relates to the Contract.

- 21.6 Where the University withholds its consent in accordance with Condition 21.5 the Contractor shall replace the Relevant Sub-Contractor and shall propose a new sub-contractor by following the process detailed in Conditions 21.3 to 21.5 above.
- 21.7 Where the University has consented to the Contractor appointing a subcontractor, the Contract will, promptly following the relevant subcontract(s) coming into force, provide copies of each subcontract and related orders to the University.
- 21.8 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.

22. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

- 22.1 Except to the extent required by law the Contractor shall not disclose to another party the existence of the Contract or the Contract Price or any other terms and conditions of the Contract.
- 22.2 The Contractor will, subject to Conditions 22.3 and 22.4:
 - 22.2.1 keep all Confidential Information secret, safe and secure;
 - 22.2.2 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;
 - 22.2.3 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
 - 22.2.4 to keep separate from all other information all Confidential Information in its possession or control.
- 22.3 The provisions of Condition 22.2 shall not apply to Confidential Information to the extent that it is or was:
 - 22.3.1 already in the possession of the other free of any duty of confidentiality on the date of its disclosure;
 - 22.3.2 in the public domain other than as a result of a breach of Condition 22.2.
- 22.4 Each party may disclose the other party's Confidential Information:
 - 22.4.1 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
 - 22.4.2 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 22.4.

- 22.5 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of Condition 22.2 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 22.2.
- 22.6 Notwithstanding the provisions of Conditions 22.1 to 22.5 the University is committed to meeting its responsibilities under the FOIA and EIR and the Contractor 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.
- 22.7 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 Contractor's commercial interests and/or constitute trade secrets ('**Commercially Sensitive Information**'), the Contractor 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.
- 22.8 The Contractor shall procure that its employees, and agents shall:
- 22.8.1 transfer any Request for Information received by the Contractor to the University as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
- 22.8.2 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;
- 22.8.3 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,
- not respond directly to a Request For Information unless authorised in writing to do so by the University.
- 22.9 The University shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information is:
- 22.9.1 exempt from disclosure in accordance with the provisions of the FOIA; or
- 22.9.2 to be disclosed in response to a Request for Information and in no circumstances shall the Contractor respond directly to a Request for Information unless expressly authorised by the University.
- 22.10 The Contractor 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:
- 22.10.1 without consulting the Contractor; or

22.10.2 following consultation with the Contractor and having taken its views into account,

provided always that where Condition 22.10.1 applies, the University shall in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

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

23. **FORCE MAJEURE**

23.1 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 Contractor, the impact of that Force Majeure Event could not have reasonably been avoided or prevented by the Contractor.

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

23.2.1 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;

23.2.2 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

23.2.3 continue to perform all of its obligations under the Contract the performance of which are not affected by the Force Majeure Event.

23.3 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 Contractor the University may terminate the Contract without liability as of the date specified by the University in the notice.

24. **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.

25. **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 Contractor shall be sent to its registered or head office and if sent to the University shall be sent to the 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.

26. **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.

27. **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.

28. **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.

29. **OFFICIAL SECRETS ACT**

29.1 The Contractor shall comply with and shall ensure that its employees, agents, representatives, suppliers and contractors comply with, the provisions of:

29.1.1 the Official Secrets Acts 1911 to 1989; and

29.1.2 section 182 of the Finance Act 1989.

29.2 In the event that the Contractor or any of its employees, agents, representatives, suppliers and/or contractors fail to comply with this Condition 29, the University reserves the right to terminate the Contract with immediate effect by giving notice in writing to the Contractor.

30. **APPOINTMENT OF A CHARGES EXPERT**

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

30.1.2 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.

30.1.3 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 30 (including by acting reasonably in agreeing the terms of engagement of any such expert).

30.1.4 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.

30.1.5 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.

31. **ESCALATION PROCEDURE**

31.1 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:

31.1.1 served a written notice (a '**Referral Notice**') on the other party notifying it of the relevant Dispute: or

31.1.2 already received a Referral Notice from the other party in relation to the same Dispute.

31.2 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 Contractor 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.

31.3 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 Contractor and 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.

31.4 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 32 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.

31.5 Nothing in this Condition 31 will prevent or delay either party from:

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

31.5.2 exercising any rights it has to terminate the Contract; or

31.5.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

32. **GOVERNING LAW AND LANGUAGE**

32.1 The language of the Contract shall be English.

32.2 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.

32.3 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.

- 32.4 Subject to Condition 32.5, 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).
- 32.5 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 Contractor 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 Contract 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 Contractor 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 Contractor 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 Contractor 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 Contractor will not:

3.2.1 be entitled to any additional payment,

3.2.2 be excused from any obligation or liability under the Contract; and/or

3.2.3 make any claim,

as a consequence of any misinterpretation or misunderstanding by the Contractor 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 Contractor, grant such access to the Site as may be reasonable for the purpose of enabling the Contractor to make enquiries in accordance with Paragraph 3.1.

4. MANNER OF CARRYING OUT THE MINOR WORKS

4.1 The Contractor 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 Contractor. The University will grant the Contractor reasonable access to enable the Contractor to carry out

the Minor Works (which may require the Contractor to work concurrently with the University's personnel and other contractors).

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

4.3.1 the removal from the Site of any materials which in the reasonable opinion of the University are not in accordance with the Contract;

4.3.2 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;

4.3.3 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 Contractor. Time shall be of the essence for performance of the Minor Works.

6. **CONTRACTOR'S SUPERVISOR**

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

7. **VARIATION OF THE MINOR WORKS**

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

7.2 The University reserves the right to at any time by notice in writing to modify the quality or quantity of the Minor Works and any alteration to the Contract 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 Contract 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 30 who will determine what is a reasonable modification to the Contract 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 Contractor's and its subcontractors' personnel shall be agreed in writing with the University in advance.

8.2 Before performing any Minor Works, the Contractor shall obtain for itself and its subcontractors (if any) all written approvals from the University's as required by the Condition

8.1 above. The Contractor 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 Contractor 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 Contractor shall comply with, and shall ensure that its subcontractors 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 Contractor immediately on receipt of notice in writing to remove any of its employees on the Site who has:

9.1.1 failed to comply with the 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 Contractor by the University; or

9.1.2 in the opinion of the University misconducted himself, or been negligent or incompetent.

9.2 The Contractor 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 Contractor 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 Contractor 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 22, the Contractor 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 Contractor through its performance of such work under the Contract.

11. **CLEARANCE OF SITE ON COMPLETION**

On completion of the Minor Works the Contractor 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:

- 12.2.1 such operator shall not become the servant of the Contractor but shall carry out with the Loaned Plant such work as he may be directed to do by the Contractor.
 - 12.2.2 the Contractor 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 Contractor, or its servants, agents or sub-contractors.
 - 12.2.3 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 Contractor, the Contractor shall be liable for all damage to the Loaned Plant unless the Contractor 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 Contractor 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 Contractor 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.