



The University of Manchester

HIGH VALUE LAB EQUIPMENT (HVLE)
LABORATORY EQUIPMENT SUPPLY AND MAINTENANCE
CONDITIONS OF CONTRACT

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1. DEFINITIONS AND DURATION

- 1.1 The Contract Documents listed in the Contract Particulars to the University's Purchase Order constitute the contract between the parties. In the event of a conflict between the provisions of any of the Contract Documents, the provisions of the Contract Document listed higher in the list of Contract Documents shall prevail over one listed lower.
- 1.2 The definition of a word used in the Contract Documents whose first letter is a capital and which has a particular meaning is contained in the Definitions Schedule. Where there is no definition none is intended. The definition shall apply to any word derived from a defined word.
- 1.3 The Contract shall begin on the Effective Date and end when the final payment and delivery is made under the Contract (whether for Equipment components or Services) unless the Contract is terminated earlier in accordance with the Contract Documents or extended by agreement ("the Contract Period").

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that it has satisfied itself of all details relating to the nature of the Equipment and Services and has raised all relevant due diligence questions with the University. The Supplier shall not be entitled to any additional payment nor be excused from any liability under the Contract if it has misinterpreted any matter or fact relating to the Equipment, Services or the Specification.
- 2.2 The Supplier warrants represents and undertakes to the University that:
- (a) all information, drawings, documentation and representations communicated to the University by the Supplier in connection with the Tender are true, complete and accurate in all respects;

- (b) it has made its own investigations and research and will not have entered into the Contract in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the University other than express statements made in the Invitation to Tender;
- (c) it has sufficient working capital, skilled staff, equipment, licences, permissions and other resources available to provide the Equipment and Services in accordance with the Contract Documents;
- (d) in sufficient time to enable the University to respond, the Supplier will notify the Authorised Officer
 - (i) of the proposed time and date for delivery during University normal working hours (for agreement with the University); and
 - (ii) (by way of written pre-installation report) of all preparations required to make the Site suitable for delivery, installation and operation of the Equipment, including equipment layout, utilities, floor loading, environmental conditions, access requirements and any other reasonable assistance required from the University to facilitate delivery.

3. SUPPLIER'S OBLIGATIONS

3.1 In Providing the Equipment and the Services the Supplier:

- (a) shall use Good Industry Practice;
- (b) shall use only new (or where the University Contract Particulars so provides, refurbished or ex-demonstration Equipment), good quality materials and ensure the Equipment is fit for purpose and that the Equipment and Services comply with the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, as amended or re-enacted;
- (c) shall use all reasonable endeavours to meet the Completion Date and comply with the Implementation Plan;

- (d) shall report to the University when requested on progress including against the Implementation Plan and allow or arrange inspection whether on its premises, those of a third party or the University's to enable the University to monitor progress in the Provision of the Equipment and the Services;
- (e) warrants and shall ensure that the Equipment
- i. in combination with any Recommended Hardware comprises all components necessary to produce a live and working Equipment which complies with, meets and delivers in all respects the requirements of the Specification including the Performance Standards and Criteria;
 - ii. is fully compliant with the Technical Solution Supplier and manufacturer published specifications; and
 - iii. has been tested using industry standard protocols to ensure that it is free from all kinds of malicious software, including all viruses (for the avoidance of doubt the University acknowledges that if it chooses to run test versions of software, other than those provided by the Supplier for the purpose of carrying out the Tests, these may contain technical bugs);
- (f) without prejudice to the provisions of Condition 5.2 (Equipment Performance and Use) warrants and during the period of any maintenance agreement shall ensure that:
- i. Equipment components identified in the Contract (and any Recommended Hardware) are fully compatible and will remain so whenever any component or Recommended Hardware is enhanced or updated by the Supplier or a manufacturer ; and
 - ii. the Equipment is fully compatible with any equipment, hardware, software or communications links identified in the Specification as needing to be compatible;

- (g) shall provide and keep available sufficient competent and skilled staff to carry out its obligations under the Contract including to Maintain the Equipment;
- (i) shall comply with the requirements of any relevant UK or EC statute, order, regulation, directives, standard, code of practice or bye-law or international agreement from time to time in force which is relevant to the Equipment and Services including without limitation the requirements of the Health and Safety at Work Act 1974 and of any other Acts pertaining to the Health and Safety of employees and other persons and the Chemicals, (Hazard Information and Packaging for Supply) Regulations (CHIP2) 1994 and environmental legislation and laws (including in relation to the disposal of goods and waste products); and shall ensure that the Equipment is CE marked and compliant as applicable and that hazardous goods are packed, labelled and accompanied by data sheets (and any other relevant risk, safety phrases and emergency information) all in English;
- (j) shall where the Construction (Design and Management) Regulations 2007 or any amendment or re-enactment of them apply to the Provision of the Equipment or the Services comply with the provisions of the Regulations and without limitation perform the duties of principal Supplier under the Regulations;
- (k) shall where access is required to any land or premises (whether the University's or those of a third party)
 - i. agree access arrangements with the Authorised Officer
 - ii. comply with applicable working and health and safety rules and not interfere with the safety or convenience of staff or the public;
 - iii. the Supplier acknowledges that all Supplier materials (including goods, tools and equipment) used or left on the land or premises are used or left at the Supplier's sole risk; and
 - iv. on or before Acceptance the Supplier shall remove all its materials, fully reinstate any damaged areas and leave the premises clean and ready for occupation;

- (l) (where required by the University) shall ensure that its staff and those of any sub-contractor carry at all times when on the premises of the University or a third party an identity card issued to it for access and produce the card when requested;
- (m) acknowledges that the University relies exclusively on the Supplier's skill and judgment expertise and experience;
- (n) accepts responsibility for and warrants the suitability of the choice of Equipment components and Equipment design including without limitation all components supplied by or obtained from third parties; and
- (o) shall ensure that it does not unnecessarily interfere with the University's operations, employees or other Suppliers and shall co-operate with other Suppliers and University employees engaged on related projects or maintenance of related equipment to such extent as may be reasonably required by the University.

4. TESTS, ACCEPTANCE AND DEFECTS LIABILITY

- 4.1 Once installation is complete, the Supplier shall demonstrate the Equipment if so required by the University. The University shall have the right to test the Equipment in accordance with the Test Plan.
- 4.2 The Supplier shall give the University reasonable notice of when the Equipment shall be ready for testing and shall co-operate with the University in and provide assistance for the carrying out of the Tests.
- 4.3 If the Equipment passes the Tests, the University will give the Supplier a signed Acceptance Certificate provided that successful completion of an individual test does not constitute acceptance of the Equipment. The Acceptance Certificate shall be signed on behalf of the University by the Project Manager. For the avoidance of doubt it is acknowledged that:

- (a) the Test Plan will include scope for rectification between Tests, so that if Equipment fails to pass the Tests, the Supplier will have an opportunity to repair any defects in the Equipment;
 - (b) where practical, repair will be carried out at the University's premises;
 - (c) defective parts will be replaced as deemed necessary by the Supplier; and
 - (d) provided the Equipment then passes its Tests, as contemplated in the Test Plan, the Contract Price shall not be subject to adjustment.
- 4.4 (a) If the Equipment fails to pass the Tests (including any re-tests allowed for within the Test Plan) within the allotted time the University shall have the right to accept the whole or any part of the Equipment as it shall decide, subject to such abatement of the Contract Price as may be reasonable in the circumstances.
- (b) In the event of a dispute as to the reasonableness of the sum, the matter may be referred to an independent expert (whose decision shall bind the parties) to be appointed by agreement or otherwise as set out in the Contract Particulars.
- 4.5 The Supplier shall, at its own expense and without delay make good, if necessary by the provision of replacement or additional items, any error or defect in the Equipment and/ or the Services which:
- (a) is identified in any notice given by the University to the Supplier prior to Acceptance or;
 - (b) develops or is identified and is notified to the Supplier by the University during the Warranty Period.

5. CHANGE CONTROL

5.1 Change Control

- (a) If the University wishes to vary the Equipment or the Services it shall submit a Change Request Form to the Supplier for quotation. The Supplier shall respond to such request within 5 Business Days (or such longer period as the parties may agree is reasonable) also specifying any changes which are reasonably necessary to Implementation Plan the Contract Price or any other term of the Contract.
- (b) If the Supplier wishes to vary the Equipment or Services it shall submit a Change Request Form to the Project Manager.
- (c) The variation shall not be implemented by the Supplier unless the University notifies it in writing that it accepts the Supplier's quotation or Change Request submitted in accordance with this Condition. The notification in writing from the University shall only be valid if given by the Project Manager.
- (d) The Contract shall not otherwise be varied without the written agreement of the parties.

5.2 Equipment Performance and Use

- (a) The Supplier acknowledges that were the University has advised the Supplier of any projected growth in the use of the Equipment and in the event the Equipment (including without limitation any item included in the Equipment) fails to meet the Performance Standards and Criteria at any time within five years from the Completion Date or Acceptance whichever is the later the Supplier shall Provide and without limitation Maintain at no additional cost to the University all additional items necessary to make the Equipment comply with the Performance Standards and Criteria.
- (b) In the event that any Equipment component is upgraded or replaced or support is discontinued generally by the Supplier or any third party supplier the Supplier shall notwithstanding that such upgrading or replacement or discontinuance of support would otherwise result in the withdrawal of the Supplier's or third party's support for the Equipment continue to support and Maintain the Equipment in accordance with the Contract Documents and provide an up-to-date copy of the Source Code to the University.

- (c) Subject to Condition 11.4 the University shall have the right to attach to implement or use on the Equipment, free of any charge by the Supplier, any equipment and/or software not supplied by the Supplier.

6. DATES FOR COMPLETION

- 6.1 Time shall be of the essence in respect of any the Completion Date and any key dates specified as such in the Implementation Plan, provided that the Supplier shall not be responsible for any delays caused by the acts or omissions of the University.

7. PAYMENT ARRANGEMENTS, PASSING OF TITLE AND RISK AND INSOLVENCY PROTECTION

- 7.1 The Supplier shall claim and receive payment of the Contract Price as specified in the Implementation Plan. Unless otherwise stated on the Contract Particulars the Contract Price is a fixed price in UK sterling and is inclusive of all costs for the provision and testing of the Equipment and Services, including carriage to the Site, insurance, packaging, duty, bank charges and training. The University shall pay VAT where applicable on the Contract Price and any other payments due under the Contract at the rate and in the manner provided by law. The University may require the Supplier to provide a bank guarantee or an on demand performance bond (at the Supplier's expense) if payments in advance are agreed. Payment will be made, for goods and services supplied in accordance with the Contract, within 30 days of receipt of an undisputed invoice. The Supplier must quote the University's Purchase Order number on all invoices, failure to do so may result in a delay in payments. Any retention shall be released as provided in the Implementation Plan.
- 7.2 Risk in the Equipment (and title to any hardware supplied as part of the Equipment) shall vest in the University on Acceptance or when the University has, subject to any retention, paid 75% or more of Contract Price, whichever is the earlier. Where the Supplier retains the whole or part of Equipment at its premises after this, risk remains with the Supplier and the Supplier shall insure the Equipment and mark it as the property of the University of Manchester.
- 7.3 If the University has paid any part of the Contract Price and the Supplier becomes insolvent as defined below before Acceptance the University may elect by serving notice in writing on the Supplier at any time prior to winding up or appointment of a liquidator to vest the whole

or any part of the Equipment in itself including to use the whole or any part of any software.
If the University so elects:

- (a) title in the Equipment shall be deemed to pass to the University and the Supplier shall be deemed to have granted to the University a licence to use the software in the Equipment in the terms set out in Condition 11 and to modify such software as it sees fit; and
- (b) the University shall pay the Supplier such sum as may be reasonable in all the circumstances for the exercise of its rights under this Condition to the extent that Supplier has not already been remunerated during the Contract Period, including giving credit to the University for all payments already made to the Supplier and on the basis that payment for partly completed work shall follow the principles for payment set out in the Implementation Plan. In the event of a dispute as to the reasonableness of the sum, the matter may be referred in accordance with Condition 4.4(b).

7.4 Such election shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the University.

7.5 Insolvency shall mean any of the events specified in Condition 21.2(c) to (k).

7.6 The Supplier shall have no right to any payment under the Contract Documents additional to the Contract Price except as agreed in accordance with Condition 5.

8. ASSIGNMENT AND SUB-CONTRACTING

8.1 The Supplier shall not assign, sub-contract (except for matters which the University agrees are minor or incidental) or otherwise transfer the Contract whether in whole or in part without the prior written consent of the University. Any permitted sub-contracting shall not relieve the Supplier of its obligations under the Contract Documents, which obligations shall remain in full force and effect.

8.2 There shall be deemed to be an assignment if the Supplier disposes of a substantial part of its assets devoted to the business of supplying and maintaining equipment of the same or similar kind to the Equipment or if the Supplier is a company there is any change of control,

as defined by Section 416 of the Income and Corporation Taxes Act 1988 in itself (or its parent company).

- 8.3 The University shall be free to assign or novate the Contract in whole or in part.

9. DELIVERY AND DOCUMENTATION

- 9.1 The time and date for delivery of Equipment to the Site shall be agreed in advance with the University. Unless otherwise agreed by both parties within the Contract Particulars the Supplier shall be responsible for the delivery of the Equipment and shall receive it and provide all labour, materials and plant required for its off-loading and installation. The Supplier shall be responsible for the safe custody of the Equipment until title and risk in it has passed to the University.
- 9.2 The Supplier shall deliver with the Equipment upon Installation (and update as necessary as part of the provision of maintenance) documentation in the media and format as specified in the Contract Particulars.
- 9.3 Unless otherwise specified in the Contract Particulars, the documentation for the Equipment shall comprise a complete set of user guides, operating manuals and technical maintenance handbooks and, where source code is provided, shall be at least as comprehensive as that which the Supplier provides to its own maintenance engineers. The Supplier shall ensure that each component forming part of the Equipment is clearly marked with a functional title or code so that it can be easily identified in the relevant documentation.
- 9.4 No additional charge shall be made for packaging in which the Equipment is delivered. Such packaging shall remain the property of the Supplier except for containers for consumable stores which shall not be returnable. If so requested the Supplier shall promptly collect and dispose of all packaging.

10. PROJECT MANAGEMENT

- 10.1 Where Project Management Arrangements apply, the following sub-conditions shall have effect:

- 10.2 The names of the project management staff for the parties and arrangements for project management shall be as set out in the Project Management Arrangements. Neither party shall change its project management staff without the prior written consent of the other party, such consent not to be refused unreasonably.
- 10.3 The parties shall procure that their project management staff meet at regular intervals and co-operate to secure satisfactory and timely completion of the Contract. The provisions of this Condition shall in no way detract from or lessen the obligations of the Supplier under the Contract Documents including without limitation the obligation to comply with the Implementation Plan.
- 10.4 The University may require the replacement of any employee of the Supplier if in the University's reasonable opinion such employee has failed to perform his duties efficiently and competently or in a proper manner. The University shall not exercise this right vexatiously.

11. LICENCE AND OTHER INTELLECTUAL PROPERTY PROVISIONS

11. Subject to any restrictions set out in the Contract Particulars the Supplier hereby grants the University an irrevocable, non-exclusive, non-transferable licence to Use the Software and, where Source Code is provided, to modify the Software as agreed between both parties as detailed within the Contract Particulars.
- 11.2. The University may grant access to its internal and external auditors, employees and Suppliers who need to have access, subject to the reasonable requirements of the Supplier to protect the confidential nature of the Software.
- 11.3. This licence also permits without further charge the use of the Software (subject to any reasonable undertakings the Supplier may require to preserve confidentiality of the Software and prevent unauthorised disclosure or disclosure to business competitors) by
- (a) any third party which performs any service previously performed by the University's employees using the Software and

- (b) the University to process the data of third parties where this is necessary for the exercise or better performance of the University's business.
- 11.4. Other software may be added to the Equipment and the Equipment may be used together with other software or on or with any hardware or other equipment. However if the Supplier can show on reasonable grounds that the combination is unsuitable and a defect occurs, the University may serve a Change Request Form in accordance with Condition 5 in respect of the work necessary to repair any defects in operation of the Equipment which work shall be chargeable to the extent caused by use with the Equipment of other Software, hardware or equipment. The University shall bear the cost of any investigation by the Supplier to establish the cause of the defect if the investigation shows that the combination caused the defect.
- 11.5 The Supplier shall have a non-exclusive, revocable licence to use University Material during the period of the Contract solely in order to perform its obligations under the Contract. Intellectual Property Rights in work done by the University and in University Material shall remain vested solely in the University. All such items, shall be kept confidential, shall be surrendered upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by the Supplier solely for the purpose of performing the Contract. No copy will be made without the consent in writing of the Authorised Officer. All such items shall be at the Supplier's risk and insured by it at its own expense against the risk of loss, theft or damage. University Material, including data, shall be kept in a distinguishable form so it can always be separated from other material and returned. At the end of the Contract Period the Supplier shall return to the University or destroy, as the University shall direct all University Material in the Supplier's possession.
- 11.6 The Supplier shall not use the name, any adaptation of the name, any logo, trademark or other device of "The University of Manchester" (including without limitation in any advertising, promotional or sales materials) nor shall it cite the University as a reference site without prior written consent obtained from the Authorised Officer in each case.
- 11.7 All Intellectual Property Rights (a) in any work deriving from the University's Intellectual Property Rights and (b) (unless otherwise set out in the Contract Particulars) in any work paid for within the Contract Price and done specifically for the University to adapt the

Equipment or Software for the University's specific needs or to write additional material, documentation or code shall be the University's property (and accordingly kept confidential). To the extent that the Intellectual Property Rights are capable of prospective assignment, the Supplier hereby assigns those rights to the University and to the extent that they are not the Supplier undertakes to assign those rights to the University or its nominee as and when they are created. The Supplier shall be entitled, subject to Condition 19 (Confidentiality), to utilise any generic knowledge, skills expertise, programming tools, problem solving methodologies and associated checklists, templates or forms developed in performance of the Contract which may have general applications for other clients.

11.8 The Supplier retains ownership of any of its pre-existing background Intellectual Property Rights or techniques deployed to Provide or Maintain the Equipment or Services and the University shall have a free, irrevocable non-exclusive licence for all purposes as is necessary to make full use of the Equipment and Services.

11.9 Except to the extent that infringement arises because goods or services are made to the University's design or instructions, the Supplier warrants that the Equipment and Services and the University's use of it will not infringe the Intellectual Property Rights of any third party.

12. ESCROW ARRANGEMENTS/UNDERTAKINGS

12.1 The Supplier shall during the period of any software licence comply with and/or procure and ensure compliance with any escrow arrangements and undertakings in respect of the Equipment set out in the Contract Particulars.

13. THIRD PARTY SOFTWARE

13.1 Where third party software is supplied the terms of any licence whether to the Supplier or to the University and whether or not appended to the Contract Documents shall not be construed as modifying or releasing the Supplier from its obligations under the Contract in any respect.

13.2 In particular but without limiting the generality of Conditions 11.1 or 13.1 should the owner of any third party software purport to remove restrict or otherwise interfere with the

University's use of the software in the Equipment the Supplier shall ensure that functionally equivalent software is provided forthwith at no cost to the University so that the University's continued use of the Equipment in accordance with the Contract is unaffected and unimpeded.

14. MAINTENANCE

- 14.1 Unless otherwise agreed, the Supplier shall Maintain the Equipment from its Acceptance for the charges set out in the Pricing Schedule for the Guaranteed Maintenance Period in accordance with the terms set out in this Condition 14. The University may terminate Maintenance by giving the Supplier at least 90 days' prior written notice to expire on the anniversary of Acceptance.
- 14.2 After the Guaranteed Maintenance Period, Maintenance shall be continued until terminated by either party serving at least six months' written notice on the other party to expire no earlier than the last day of the Guaranteed Maintenance Period unless agreed otherwise by both parties. In the event of such termination the Supplier shall make a pro rata refund of maintenance payments made by the University for maintenance to be provided after such termination date.
- 14.3. The Supplier may adjust its charges for Maintenance on each anniversary of Acceptance but any increase shall not exceed the lower of
- (a) the percentage change between the Index last published before the first University maintenance payment (if there has not yet been any adjustment in maintenance charges) or the last adjustment and the Index last published before such review and
 - (b) the Supplier's actual cost increases incurred in providing maintenance during the period specified in Condition 14.3.(a).
- 14.4. The Supplier's fix times and escalation procedures are defined in the Contract Particulars.
- 14.5 Without prejudice to Condition 14.4, if a Critical Error occurs the Supplier undertakes;
- (i) to resolve the incident as quickly as possible including by giving on site assistance where necessary;

- (ii) to escalate the matter to the next level of management within 1 hour of the occurrence and in the event that the incident is not resolved within 1 Business Day of occurrence, the Institution shall have the right to escalate the incident to the Supplier's manager in charge of its maintenance services for assistance in resolving such incident and such person will assume responsibility for reporting back to the Institution on a twice-daily basis with an update of progress being made in resolving the incident by the Supplier; and
- (iii) in the event that the incident is not resolved within 2 Business Days, the University may require the relevant Supplier director to attend a management meeting at the University to review the incident and technical or project staff nominated by the University will be entitled to attend at the premises of the Supplier to oversee the work being carried out to resolve the incident.

14.6 The University may exercise its termination rights separately to Maintenance for hardware or software or in respect of both.

14.7 The University may terminate Maintenance in whole or in part if any of the following events occur:

(a) more than 10% of requests for Maintenance in any 3 month period are not fixed within the agreed fix time.

(b) A Critical Error has existed in the operation of the Equipment for 1 week or more.

(c) a Significant Error has existed in the operation of the Equipment for 2 months or more.

14.8. Any person (other than University) who, under the terms of the Contract, is licensed to use the software may ask the Supplier to maintain the Equipment under separate arrangements from the University. In such event the Supplier shall contract with such person or persons at

such price as may be reasonable in all the circumstances, having regard to the share of the support charge relevant to their use of the Equipment prior to the commencement of such separate contractual arrangements. In such event the fee to the University shall be reduced proportionately.

- 14.9. The Supplier shall only access the Equipment whether by remote diagnostics or otherwise with the prior consent and in accordance with procedures laid down by the University.
- 14.10. The University shall have the right to test work done in Maintaining the Equipment.
- 14.11. The Supplier shall take the lead in managing and resolving any maintenance requests even where equipment of third parties may be contributing to the problem. The Supplier shall co-operate fully with any such party to ensure prompt resolution. In the event of any difference between the Supplier and any such party, the University shall determine where responsibility lies and the Supplier shall comply with any instruction given by the University to secure effective resolution.
- 14.12 The Supplier shall from time to time make such modifications to the Equipment as shall ensure that the Equipment fulfils any change of legislation or new legal requirements which affect the Equipment or any function or facility contained within it.
- 14.13 The Equipment may not be removed in whole or in part from the Site for maintenance except with the Authorised Officer's prior written consent (removed items shall be at the risk of the Supplier) and provided
- (a) removed items are marked as property of the University;
 - (b) loan items of the same or nearest equivalent specification are installed to keep the Equipment satisfactorily operational; and
 - (c) where any part of the Equipment is beyond economic repair, all data must be erased before disposal.
- 14.14 The University may procure consumable supplies and spares from the Supplier or elsewhere, provided they meet the minimum published manufacturer standards. If the University so requests, the Supplier shall use its reasonable efforts to make consumables and spares for

the Equipment available for purchase for a period of 7 years from Acceptance.

15. INDEMNITY

15.1 The Supplier shall indemnify the University and keep the University indemnified in full against all direct, losses, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the University as a result of or in connection with:

- (a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use, manufacture or supply of the Equipment; or
- (b) defective workmanship, quality or materials in or in relation to the Equipment; or
- (c) any claim made against the University by a third party arising out of or in connection with the supply of the Equipment to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the terms of the Contract by the Supplier, its employees, agents or subcontractors; or
- (d) any breach by the Supplier of its obligations under Condition 20: Data Protection; or
- (e) any breach of the Modern Slavery Act 2015.

15.2 Liabilities under the indemnity at Condition 15.1 are conditional upon the University discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the University which may reasonably be considered likely to give rise to a liability under this indemnity (a Claim), the University shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) give the Supplier and its professional adviser access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the University, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- (d) in the case of alleged or actual infringement, the University allows the Supplier at the Supplier's discretion and expense to alter, replace or withdraw any product of the Services so that any offending element is removed.

15.3 The provisions of this Condition 15 shall survive termination of the Contract, however arising.

16 LIMITATION OF LIABILITY

16.1 Nothing in these Conditions:

- (a) shall limit or exclude the Supplier's liability for:
 - (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (ii) fraud or fraudulent misrepresentation;
 - (iii) any liability to the extent that it cannot be otherwise excluded or limited by Law; or
- (b) shall limit or exclude any liability in respect of the Supplier's indemnities in Condition 15.1.

16.2 Without prejudice to Condition 16.1 above the Supplier shall under no circumstances whatever be liable to the University, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

- (a) loss of profit; or

- (b) loss of goodwill; or
- (c) loss of business; or
- (d) loss of business opportunity; or
- (e) loss of anticipated saving; or
- (f) any special, indirect or consequential damage arising under or in connection with the Contract.

16.3 Notwithstanding Condition 16.2, the losses for which the Supplier assumes responsibility and which shall, (subject to Condition 16.4) be recoverable by the University include:

(a) any sums paid by the University to the Supplier pursuant to this Contract, in respect of Equipment and / or Services not provided in accordance with the terms of this Contract;

(b) additional costs or procuring and implementing replacements for, or alternatives to the Equipment and / or Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials; and

(c) losses incurred by the University arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Supplier personnel, regulator or customer of the University) against the University caused by the act or omission of the Supplier.

16.4 The Supplier's total liability to the University in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 150% of the total order value of the Purchase Order.

16.5 The provisions of this Condition 16 shall survive termination of the Contract, however arising.

17 INSURANCE

The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the University's request, produce evidence of the insurance policies and of the payment of the premiums.

18. FAILURE TO PERFORM AND LIQUIDATED DAMAGES

- 18.1 Neither the University nor the Supplier shall be liable for any delay or failure to perform any obligation under the Contract if such delay or failure results from circumstances which were not reasonably foreseeable at the date of the Contract and are beyond the reasonable control of the defaulting party.
- 18.2 The parties shall agree and record in writing the extent of any such delay and any consequential amendments to the Implementation Plan or to any other part of the Contract.
- 18.3 If the Supplier fails to meet the Completion Date the Supplier shall pay or allow to the University by way of liquidated damages such sums set out in the Contract Particulars.
- 18.4 The parties agree that having regard to the difficulty of quantifying precisely the University's loss arising from delay the sums set out in the Contract Particulars represent a genuine and fair pre-estimate of the University's direct loss in respect of additional maintenance other expenditure or wasted and/or unproductive staff time rendered unnecessary or wasted by the period of delay in completion and for loss of use of the Equipment.
- 18.5 The University may deduct such sums from any payments due to the Supplier. The payment or deduction of such sums shall not relieve the Supplier of any of its obligations under the Contract nor deprive the University of any right or remedy under the Contract.
- 18.6 The University may terminate the Contract under Condition 21 in addition to levying liquidated damages under this Condition. In the case of such termination the University's right to damages shall be at large subject to credit being given for the liquidated damages under this Condition received in respect of the loss to which they relate.
- 18.7 If the Supplier fails to provide maintenance of the software in accordance with the Contract Documents the University may without prejudice and in addition to any other rights under the Contract terminate the Contract under Conditions 14 or 21 and recover by way of liquidated damages a pro rata percentage of the Contract Price for each year or part of a year outstanding of the Guaranteed Maintenance Period (for example one fifth for each outstanding year if the Guaranteed Maintenance Period is five years).

19 CONFIDENTIALITY AND FREEDOM OF INFORMATION

19.1 A party ("**the Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature ("**the Confidential Information**") and have been disclosed to the Receiving Party by the other party ("**the Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.

19.2 The restriction in Condition 19.1 above does not apply to:

- (a) any use or disclosure authorised by the Disclosing Party or required by law or regulation;
- (b) any information which is already in, or comes into, the public domain otherwise than through the Receiving Party's unauthorised disclosure;
- (c) information which is known by the Receiving Party before the Confidential Information is disclosed (as can be demonstrated by the Receiving Party's written records) and is not under any obligation of confidence;
- (d) lawfully becomes available to the Receiving Party other than from a source which is connected with the Disclosing Party (as can be demonstrated by the Receiving Party's written records); or
- (e) information which the Disclosing Party agrees with the Receiving Party is not Confidential Information.

19.3 The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

19.4 The Supplier acknowledges that the University is subject to the provisions of the Freedom of Information Act 2000 (as amended from time to time) and that the University is therefore subject to legal duties which may require the disclosure of information in relation to the Contract. If the University holds information relating to the Contract on behalf of the Supplier, the Supplier agrees to assist and cooperate with the University to enable it to comply with the Freedom of Information Act 2000.

19.5 This Condition 19 shall survive termination of the Contract.

20 DATA PROTECTION

20.1 The Supplier acknowledges that the University is the Data Controller and places great emphasis on confidentiality, integrity and availability of information and Personal Data. The University alone shall determine the purposes for which and the manner in which Personal Data are or are to be Processed.

20.2 Neither party shall do any act that puts the other party in breach of its obligations set out in this Condition 20 and nothing in this Contract shall be deemed to prevent any party from taking the steps it deems necessary to comply with the Data Protection Act 1998 or other relevant Data Protection Legislation or regulatory provisions.

20.3 The Supplier shall:

- a. Process the Personal Data only in accordance with instructions from the University to perform its obligations under this Contract;
- b. ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data;
- c. not disclose or transfer the Personal Data to any third party or Supplier's Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the University (save where such disclosure or transfer is specifically authorised under this Contract);

- d. take all reasonable steps to ensure the reliability and integrity of any Supplier's Personnel who have access to the Personal Data and ensure that the Supplier's Personnel:
 - i. are aware of and comply with the Supplier's duties under this Condition and Condition 19: confidentiality;
 - ii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the University or as otherwise permitted by this Contract; and
 - iii. have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- e. notify the University within 5 Business Days if it receives:
 - i. from a Data Subject (or third party on their behalf):
 - 1. a Data Subject Access Request (or purported Data Subject Access Request);
 - 2. a request to rectify, block or erase any Personal Data; or
 - 3. any other request, complaint or communication relating to the University's obligations under the DPA;
 - ii. any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - iii. a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- f. provide the University with full cooperation and assistance (within the timescales reasonably required by the University) in relation to any complaint, communication

or request made as referred to in Condition 20.3(e), including by promptly providing:

- i. the University with full details and copies of the complaint, communication or request;
 - ii. where applicable, such assistance as is reasonably requested by the University to enable the University to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - iii. the University, on request by the University, with any Personal Data it holds in relation to a Data Subject; and
- g. if requested by the University, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Condition and provide to the University copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

20.4 The Supplier shall not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC (together "Restricted Countries"). If, after the Effective Date, the Supplier or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Countries, the following provisions shall apply:

- a. the Supplier shall submit a change request to the University which, if the University agrees to such change request, shall be dealt with in accordance with Condition 28.6 (Variation) and Conditions 20.4(b) to 20.4(d);
- b. the Supplier shall set out in its change request and/or impact assessment details of the following:
 - i. the Personal Data which will be transferred to and/or Processed in any Restricted Countries;

- ii. the Restricted Countries which the Personal Data will be transferred to and/or Processed in; and
 - iii. any Subcontractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - iv. how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the University's compliance with the DPA;
- c. in providing and evaluating the change request and impact assessment, the parties shall ensure that they have regard to and comply with then-current University and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- d. the Supplier shall comply with such other instructions and shall carry out such other actions as the University may notify in writing, including:
 - i. incorporating standard and/or model Conditions (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Contract or a separate data processing agreement between the parties; and
 - ii. procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - 1. a direct data processing agreement with the University on such terms as may be required by the University; or
 - 2. a data processing agreement with the Supplier on terms which are equivalent to those agreed between the University and the Sub-contractor relating to the relevant Personal Data transfer,

and in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the University deems necessary for the purpose of protecting Personal Data.

20.5 The Supplier shall use its reasonable endeavours to assist the University to comply with any obligations under the DPA and shall not perform its obligations under this Contract in such a way as to cause the University to breach any of the University's obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

20.6 Each party shall notify the other immediately if they become aware of any actual, threatened or potential breach of security of the Personal Data. The Supplier shall, if a breach of security occurs, immediately take all reasonable steps necessary to:

- (a) remedy such breach or protect the Personal Data against any breach or threat; and
- (b) prevent an equivalent breach in the future.

20.7 This Condition 20 shall survive the termination of the Contract, however arising.

21 TERMINATION

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

- (a) in respect of the supply of Equipment, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. The University shall pay the Supplier fair and reasonable compensation for any work in progress on the Equipment at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss; and
- (b) where the Contract is subject to the Public Contract Regulations 2015 the University may terminate this Contract on giving 6 months' notice in writing to the Supplier if:

- (i) the Contract has been subject to a substantial modification which would have a required a new procurement procedure in accordance with Regulation 72(9) of the Public Contract Regulations 2015;
- (ii) the Supplier has, at the time of contract award, been in one of the situations referred to in Regulation 57(1) of the Public Contract Regulations 2015, including as a result of the application of Regulation 57(2) of the Public Contract Regulations 2015, and should therefore have been excluded from the procurement procedure; or
- (iii) the Contract should not have been awarded to the Supplier 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 of Treaty of the Functioning of the European Union.

21.2 Without prejudice to any other right or remedies which the University may have, the University shall have the right at any time to terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any of the terms and conditions of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing to do so, and for the avoidance of doubt the parties acknowledge and agree that a breach of Condition 17 (Confidentiality), Condition 18 (Data Protection) and Condition 22 (Compliance with Laws) shall be considered material; or
- (b) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (c) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is

deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- (d) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (i) the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 21.3(c) to Condition 21.3(j) (inclusive);

- (l) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
 - (m) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 21.4 On termination of the Contract for any reason, the Supplier shall immediately deliver to the University all University Materials and all copies of information and data provided by the University to the Supplier for the purposes of the Contract. The Supplier shall certify to the University that it has not retained any copies of University Materials or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in Condition 19; and
- 21.5 If the Supplier fails to fulfil its obligations under Condition 21.4, then the University may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.
- 21.6 If the University terminates the Contract, the Supplier shall promptly refund any pre-payments and, if so requested, the Supplier shall remove the Equipment from the Site, failing which the University may despatch the Equipment to the Supplier at the Supplier's risk and cost.
- 21.7 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the University accrued as at termination.
- 21.8 The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

22. FORCE MAJEURE

- (a) For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of either party including but not limited to strikes, lock-outs or

other industrial disputes (whether or not involving the workforce of either party), act of God, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

- (b) Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents either party from performing any of its obligations under the Contract for more than 12 weeks, either party shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other party.

23. CORPORATE AND SOCIAL RESPONSIBILITY AND EQUALITY

- 23.1 Whilst performing the Contract the Supplier shall use (and shall ensure any third party supplier to the Supplier uses) its reasonable endeavours to conserve energy, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.
- 23.2 The Supplier acknowledges that the University is subject to equal opportunities legislation and undertakes that it shall not (and shall ensure any third party supplier to the Supplier shall not) unlawfully discriminate for any reason and shall take all reasonable steps to secure the Supplier's personnel (or that of any third party supplier) likewise do not unlawfully discriminate.

24. COMPLIANCE WITH LAWS

- 24.1 In performing its obligations under the Contract, the Supplier shall and shall ensure that each of its subcontractors shall comply with:
 - (a) all applicable laws, statutes, regulations and codes from time to time in force;
 - (b) the Mandatory Policies; and
 - (c) UK immigration legislation and to ensure full compliance with the UK Border Agency's guidance for employers on the prevention of illegal working, in

accordance with the Immigration, Asylum and Nationality Act 2006 in respect to all staff engaged by the Supplier and working at the University (the UK Border Agency's guidance is available at (<https://www.gov.uk/government/collections/employers-illegal-working-penalties#guidance-and-codes-of-practice>). The University expects that proper 'right to work checks', including repeat checks for individuals with limited right to work in the UK, will have been carried out for staff engaged by the Supplier and working at the University, and that the Supplier complies fully with its record-keeping and reporting responsibilities for any migrant workers sponsored by the Supplier under Tier 2 or Tier 5 of the UK Border Agency's points-based immigration system. The Supplier will, on request, provide the University with such documentation as it may require to verify that the Supplier has complied with the requirements set out above.

- 24.2 The University may terminate the Contract with immediate effect by giving writing notice to the Supplier if the Supplier commits a breach of Condition 24.1 above.

25. AUDIT

- 25.1 The Supplier shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:

- (a) the Equipment provided under it;
- (b) all expenditure reimbursed by the University;
- (c) all payments made by the University; and
- (d) records to evidence compliance with Condition 24 (Compliance with Laws).

- 25.2 The Supplier shall on request afford the University or the University's representatives such access to those records as may be required in connection with the Contract.

26. DISPUTE RESOLUTION

- 26.1 The parties shall attempt in good faith to negotiate a settlement to any dispute arising between them out of or in connection with this Contract within 30 Business Days of the dispute arising.

- 26.2 If the dispute cannot be resolved, then the parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (“CEDR”) Model Mediation Procedure from time-to-time in force.
- 26.3 To initiate the mediation, a party to the Contract must give notice in writing (the “ADR Notice”) to the other party requesting a mediation in accordance with this Condition 24. The mediation is to take place not later than 30 Business Days after the ADR Notice. If there is any issue on the conduct of the mediation upon which the parties cannot agree within 14 Business Days of the ADR Notice, then CEDR shall, at the request of either party, decide the issue for the parties, having consulted with them. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.
- 26.4 Unless otherwise agreed, all negotiations connected with the dispute and any settlement shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 26.5 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the University and Supplier.
- 26.6 If the parties fail to reach agreement within 60 Business Days of the initiation of the mediation, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.
- 26.7 The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings

27. NOTICES

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service or commercial courier.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 24(a); if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- (c) The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

28. GENERAL

- 28.1 Each right or remedy of the University under the Contract is without prejudice to any other right or remedy of the University whether under the Contract or not.
- 28.2 If any provision or part provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 28.3 Failure or delay by the University in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 28.4 Any waiver by the University of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 28.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 28.6 No variation of the Contract shall be valid unless it is agreed in writing and signed by, or on behalf of, each of the parties.

- 28.7 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 28.8 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).
- 28.9 Nothing in the Contract shall limit or exclude any liability for fraud.
- 28.10 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 28.11 The Supplier shall not exploit publicity in any form in connection with the Contract or the University without obtaining the prior written consent of the University.
- 28.12 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts for all contractual and non-contractual disputes.

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DEFINITIONS SCHEDULE

DEFINITIONS

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| "Authorised Officer" | means the University employee authorised, either generally or specifically, to sign the Purchase Order or such other person notified from time to time (or their designate), confirmation of which may be obtained from the relevant Department or Secretary of the Faculty Board. |
| "Acceptance" | notification by the University under Condition 4.3 that the Equipment has passed all the Tests. |
| "Acceptance Certificate" | written notification from the Institution that the Equipment is accepted as being in accordance with the Specification. |
| "Business Days" | means a day, excluding Saturdays and Sundays and official University closure days, on which banks are generally open in London, England, for the transaction of normal banking business. |
| "Change Request Form" | as provided in the Contract Particulars. |
| "Completion Date" | the date stated in the Implementation Plan by which the Equipment is to have passed all the Tests. |
| "Contract" | the Contract constituted by the Contract Documents. |
| "Contract Documents" | the documents set out in the Contract Particulars. |

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| “Contract Particulars” | the document entitled Contract Particulars which sets out the specific details for the Contract and is agreed and by both parties (normally annexed to a Purchase Order). |
| "Contract Price" | the price for the Equipment set out in the Pricing Schedule. |
| “Critical Error” | an incident is materially affecting the usability of the Equipment to the point where the University cannot conduct critical functions within its normal course of business. |
| “Data Controller” | shall have the meaning set out in the DPA up to the 25th May 2018 and thereafter shall have the meaning as in the GDPR. |
| “Data Protection Legislation” | means the Data Protection Act 1998 (DPA) including subordinate legislation and any data protection law amending, replacing, superseding or supplementing the Data Protection Act 1998 during the term including the General Data Protection Regulation to enter into force 25th May 2018 (GDPR) . |
| “Data Subject” | shall have the same meaning as set out in the DPA up to the 25 th May 2018 and thereafter shall have the meaning as in the GDPR. |
| “Data Subject Access Request” | means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data. |
| “Effective Date” | the date of any form of agreement signed by the parties; otherwise it shall be date of the Purchase Order. |

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| "Equipment" | as specified in the Contract Particulars or Purchase Order. |
| "Good Industry Practice" | means using standards, practices, methods and procedures and exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in providing equipment and services of a similar type to that contemplated by the Contract. |
| "Guaranteed Maintenance Period" | as provided in the Contract Particulars |
| "Implementation Plan" | as provided in the Contract Particulars. |
| "Invitation to Tender" | as provided in the Contract Particulars. |
| "Index" | Retail Prices Index as published by the National Office for Statistics or such other index as may be published in substitution therefore. |
| "Intellectual Property Rights" | patents, trade marks, service marks, registered designs, copyrights, database rights, design rights, confidential information and any other right recognised in any jurisdiction. |
| "Maintain" | <p>to ensure that the Equipment continues to meet the Performance Standards and criteria, including:</p> <p>In relation to hardware:</p> <p>to maintain, repair, and keep in good operating condition in accordance with the manufacturer's recommendations by regular preventative maintenance and by responsive maintenance and by the provision of updated documentation.</p> <p>In relation to software:</p> |

to investigate and correct software errors or failures by the software to comply with the Specification, to provide and install versions of the Software (including without limitation updated documentation) developed by the Supplier and/or required as a result of changes to the Equipment operating software, to advise (by telephone when requested) about the hardware operating procedures and difficulties.

“Mandatory Policies”

Anti-Corruption and Bribery Policy

(<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=17994>);

Data Protection Policy

(<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=14914>);

Equality and Diversity Policy

(<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=8361>);

Freedom of Information Policy

(<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=14915>);

Information Security Policy

(<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=6525>);

Policy for Socially Responsible Investment

(<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=659>);

and

Procurement Policy

(<http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=11843>).

"Performance Standards
and Criteria"

the performance standards and criteria set out in
the Contract.

“Personal Data”

shall have the same meaning as in sections 1(1) and 2 of
the DPA up to the 25th May 2018 and thereafter shall have
the meaning as in the GDPR.

“Process”

shall have the meaning given to it under the DPA up to the
25th May 2018 and thereafter shall have the meaning as

in the GDPR and “Processed” and “Processing” shall be construed accordingly.

“Pricing Schedule”

as provided in the Contract Particulars.

“Project Manager”

the University employee authorised to oversee the implementation of the Contract on behalf of the University as named in the Contract Particulars.

“Project Management Arrangements”

as provided in the Contract Particulars

"Provide"

without limitation to sell supply license sub-license customise deliver install commission test rectify, support and Maintain.

“Purchase Order”

the University purchase order for the Equipment.

“Recommended Hardware”

the hardware and other components recommended by the Supplier to support the Equipment whether or not listed in the Contract Particulars.

"Services"

all Services and work necessary to Provide and Maintain the Equipment including without limitation all telecommunications links, data transfer, back record conversion, project management, installation, documentation, training and maintenance which are required to provide a live and working Equipment to comply with the Specification.

“Significant Error”

the Institution is unable to use an important feature and as a result is being caused major inconvenience, but is not prevented from continuing with its business operation.

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| "Site" | as provided in the Contract Particulars. |
| "Software" | the software and associated technical documentation (together with amendments to the Software made during the provision of Maintenance) all as provided by the Supplier to meet the requirements of the Contract. |
| "Source Code" | software in eye-readable form such that it can be compiled or interpreted into equivalent object code together with all technical data information drawings and documentation necessary for the understanding use reproduction modification correcting and enhancing of such software. |
| "Specification" | as provided in the Contract Particulars. |
| "Technical Solution" | as provided in the Contract Particulars. |
| "Tender" | as provided in the Contract Particulars. |
| "Test Plan" | as provided in the Contract Particulars. |
| "Tests" | the Tests including the opportunities for rectification and re-testing set out in the Test Plan. |
| "Training" | all tuition guidance assistance and documentation to staff to enable them to perform their roles in relation to the Equipment and to enable the University to use the Equipment to best advantage and to meet the requirements of the Specification. |

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| “Use” | means the use of the Software in any or all of the following ways: loading, installing, executing, utilising, storing and displaying the Software (in whole or in part) to provide business systems and the processing of data in accordance with the Contract; and copying the Software to create a reasonable number of backup copies. |
| “University Material” | University specifications, tools, information, know how, instructions, plans, drawings, patterns, models, designs, data, including personal data, equipment or other material made available to or obtained by the Supplier in connection with the Contract. |
| “Warranty Period” | the period specified in the Contract Particulars beginning on the date specified in the Contract or from the making good of any defect or error in accordance with Condition 4.5(b), whichever is the later date |
| “VAT” | means value added tax chargeable under English law for the time being and any similar additional tax. |