

CONDITIONS OF PURCHASE - GOODS AND/OR SERVICES

1. INTERPRETATION

1.1 In these Conditions:

Award Letter: the award letter issued by the University to the Supplier accepting the Specification.

Business Day: any day (other than a Saturday, Sunday or public holiday in England) where the banks in London are open for business.

Claims: means all claims (whether in tort, contract, statute or otherwise) including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers.

Commencement Date: the date stated on the Contract.

Conditions: these terms and conditions as amended from time to time in accordance with clause 23.1.

Confidential Information: as defined at clause 14.1.

Contract: the Award Letter incorporating these Conditions, together with any schedules or annexes thereto.

Data Protection Laws: means the General Data Protection Regulation (Regulation (EU) 2016/679) and the UK's Data Protection Act 2018, together with all amendments, subordinate legislation, directions of any competent privacy regulator, relevant regulatory guidance and codes of practice.

Deliverables: the Goods and/or products of the Services and all Resulting Information.

Employee Liability Information: in respect of each of the Transferring Employees, the information set out in Regulation 11(2) of the TUPE Regulations.

Goods: any goods (including any part or parts of them) agreed to be bought by the University from the Supplier under the Contract, as set out in the Contract.

Incumbent Services: any services previously provided to the University by the University or an Incumbent Supplier.

Incumbent Supplier: any third party previously appointed by the University to supply Incumbent Services.

Incumbent Transferring Employees: those employees of the University or an Incumbent Supplier whose contracts of employment will be transferred to the Supplier pursuant to the TUPE Regulations as a result of the provision of the Services by the Supplier in replacement for the Incumbent Services.

Information: any information, however recorded or preserved, including but not limited to any document in writing, drawing, map, plan, diagram, design, picture or other image; any tape, disk or other device or record embodying information in any form and relating to the supply of the Goods and/or the Services.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Key Personnel: any person who, in the University's opinion (acting reasonably), is fundamental to the performance of the Contract.

Order: the University's written instruction to buy the Goods and/or the Services subject to the Contract, whether by way of an Award Letter or otherwise.

PCR 2015: the Public Contracts Regulations 2015, as amended from time to time.

Proposal: the materials handed to the University and describing how the Supplier proposes to conform to the Specification in its supply of the Goods and/or the Services.

Relevant Terms: as defined at clause 20.2.

Relevant Transfer: a Relevant Transfer for the purposes of the TUPE Regulations.

Replacement Supplier: any third party appointed by the University from time to time to supply services in replacement for the Services.

Resulting Information: as defined at clause 16.4(b).

Request: as defined at clause 5.2.

Services: any services agreed to be bought by the University from the Supplier under the Contract, as set out in the Contract.

Services Start Date: the start date for the supply of the Services as stated in the Contract.

Service Transfer: a change in the identity of the provider of the Services (or any part of the Services) following the Commencement Date (whether as a result of termination of all or part of the Contract or otherwise).

Service Transfer Date: the date on which the Service Transfer takes effect.

Specification: the requirements and specifications of the Goods and/or the Services, a copy of which is appended to the Contract for identification.

Supplier: as set out in the Contract.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier and used directly or indirectly in the supply of the Goods and/or the Services which are not the subject of a separate agreement between the parties under which title passes to the University.

Supplier's Final Staff List: the list of all the Supplier's employees engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services at the Service Transfer Date.

Supplier's Provisional Staff List: a list prepared and updated by the Supplier of all of the Supplier's employees engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list.

Supplier's Team: the Supplier's personnel engaged in the performance of the Contract.

Transferring Employees: those employees of the Supplier whose contracts of employment will be transferred from the Supplier to the University or a Replacement Supplier pursuant to the TUPE Regulations on a Service Transfer.

TUPE Regulations: the transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, modified, replaced or re-enacted from time to time).

University: Bournemouth University Higher Education Corporation of Poole House, Talbot Campus, Fern Barrow, Poole, Dorset BH12 5BB.

University's Equipment: any equipment, systems, cabling or facilities provided by the University and used by the Supplier directly or indirectly in the supply of the Goods and/or the Services.

University's Group: any subsidiary of the University and a company is the subsidiary of the University if the University if it: (a) holds a majority of the voting rights in it, or (b) is a member of it and has the right to appoint or remove a majority of its board of directors or (c) is a member of it and controls alone, pursuant to an agreement with other members a majority of the voting rights in it. The University shall be treated as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee.

VAT: value added tax chargeable under English law for the time being and any similar, or additional tax.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 These Conditions and any schedules and annexes to the Contract form part of the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to the Contract includes these Conditions and any schedules and annexes.
- 1.5 Words in the singular shall include the plural and vice versa.

- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 Where the words **include(s)**, **including** or **in particular** are used in the Contract, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.8 In these Conditions, references to clauses are to the clauses of these Conditions.

2. SALE OF THE GOODS AND SUPPLY OF THE SERVICES

- 2.1 From and including the Commencement Date and until the Contract expires or is terminated in accordance with clause 16, the Supplier shall sell and/or supply and the University shall purchase such quantities of the Goods and/or Services as may be ordered by the University from time to time in accordance with the Contract.
- 2.2 When the University wishes to place an order for the Goods and/or the Services, it shall give a written instruction to the Supplier in the form of an Order.
- 2.3 The Supplier shall use its best endeavours to deliver the Goods and/or supply the Services in accordance with the Order and shall notify the University, immediately, where the Supplier cannot deliver the Goods or perform the Services set out in the Order.
- 2.4 All sales of Goods and supplies of the Services pursuant to the Contract shall be on and subject to these Conditions to the exclusion of any other terms which the Supplier seeks to incorporate, or which are implied by trade, custom, practice or course of dealing, save for the Specification and the Supplier hereby waives any right which it may otherwise have to rely on such terms and conditions.

3. SUPPLIER'S STATUS

- 3.1 The Contract shall not operate nor shall it be construed as creating a relationship of employer and employee and the Supplier shall supply the Goods and/or the Services as an independent contractor.
- 3.2 The Supplier shall be fully responsible for and indemnify the University and keep the University indemnified against all claims and demands which may be made on the University in respect of:
- (a) taxation on earnings and national insurance contributions whatsoever arising from or made in connection with the supply of the Goods and/or the Services;
 - (b) any employment-related claims or any claim based on worker status (including reasonable costs and expenses) brought against the University and arising out of or in connection with the supply of the Goods and/or the Services.

3.3 The University may satisfy such indemnity (in whole or in part) by way of deduction and/or set off from any payment due to the Supplier in accordance with clause 11.11.

3.4 The Supplier may be engaged, employed or concerned in any other business, trade, profession or other activity which does not place the Supplier in conflict of interest with the University. However, the Supplier may not be involved in any capacity in a business which does or could compete with the business of the University without the prior written consent of the University.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall ensure that all Goods and/or Services that it delivers or supplies to the University under the Contract conform in all respects with the terms of the Contract and the corresponding Order issued by the University.

4.2 The Supplier shall ensure that it has at all times sufficient stock levels of the Goods and shall use personnel who are suitably qualified, skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract.

4.3 Where the Supplier is not the manufacturer of the Goods, the Supplier shall ensure, where the Supplier is legally able to do so, that the University has the benefit of all manufacturer's warranties and guarantees in respect of the Goods that are made available to the Supplier.

4.4 The Supplier shall:

- (a) co-operate with the University in all matters relating to the supply of the Goods and/or the Services;
- (b) provide the University with the contact details of the Supplier's key authorised representative who shall be the main point of contact for the University and who shall have the authority to act on behalf of the Supplier in all matters relating to the Contract. The Supplier shall use reasonable endeavours to ensure that the same person acts as the Supplier's key authorised representative throughout the Contract term, save where such individual does not meet the standard reasonably expected of a person in that role and the University requests a different authorised representative;
- (c) promptly inform the University of the absence (or anticipated absence) of any member of the Supplier's Team where this absence is likely to affect the proper performance of the Contract. If the University requires, the Supplier shall provide a suitably qualified substitute;
- (d) ensure that the Supplier's Team use reasonable skill and care in the performance of the Services.

4.5 The Supplier shall:

- (a) observe, and ensure that the Supplier's Team observe, all health and safety rules and regulations and any other security requirements that apply at the University's premises. The University reserves the right to refuse any member of the Supplier's Team access to the University's premises, which shall only be given to the extent necessary for the performance of the Services;
- (b) notify the University as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- (c) before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to the performance of the Services.

4.6 It is a condition of carrying out the Services that the Supplier:

- (a) does not engage in any activity, practice or conduct which would constitute an offence under either of sections 45(1) and 46(1) of the Criminal Finances Act 2017 (the "2017 Act");
- (b) promptly reports to the University any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the 2017 Act;
- (c) takes all reasonable steps to ensure that any person affiliated with the Supplier in relation to carrying out the Services does not engage as prohibited by subparagraph (a) above. Reasonable steps include complying with any guidance issued under the 2017 Act; and
- (d) promptly provides such evidence of compliance with this clause as the University reasonably requests.

5. CHANGE CONTROL

5.1 The University and the Supplier shall meet at times to be mutually agreed to discuss matters relating to the Contract and failing such agreement the parties shall meet on at such times as the University notifies.

5.2 If either party wishes to change any aspect of the Specification, it shall submit written details of the requested change to the other (the "**Request**").

5.3 The Supplier shall, within 5 Business Days of receipt of the Request, write to the University setting out whether it can implement the change and if so, provide a written quote to the University setting out:

- (a) the likely time required to implement the change;
- (b) any necessary variations to the Supplier's charges arising from the change;
- (c) any other impact of the change on the Contract.

5.4 Unless both parties consent in writing to a proposed change, there shall be no change to the Specification.

- 5.5 If both parties consent to a proposed change to the Specification, the change shall be made, only after agreement of the necessary variations to any relevant terms of the Contract in accordance with clause 23.1.
- 5.6 If the Supplier requests a change to the Specification, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Goods and/or Services to be supplied, the University shall not unreasonably withhold or delay its consent.
- 5.7 Notwithstanding clauses 5.1 to 5.6 inclusive or as otherwise stated in the Contract and where Part 2 of PCR 2015 applies to the Contract, no change or other variation to the Contract (**Modification**) shall amount to a Modification which falls outside the provisions of Regulation 72(1) of PCR 2015.

6. QUALITY OF THE GOODS AND SERVICES

- 6.1 In respect of the Goods, the Supplier warrants to the University that, for the greater of 12 months from delivery or the period set out in the Contract:
- (a) the Goods shall be of satisfactory quality and shall be fit for any purpose whether expressly or impliedly made known to the Supplier at the time of the agreement as defined in the Sale of Goods Act 1979;
 - (b) the Goods shall be free from defects in design, material and workmanship;
 - (c) the Goods shall comply with any relevant specification, sample or pattern supplied or advised by the University;
 - (d) the Goods shall comply with all applicable legislation from time to time in force and the Supplier will inform the University as soon as it becomes aware of any changes in that legislation.
- 6.2 In respect of the Services, the Supplier undertakes to the University that:
- (a) the Supplier shall perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards and any special skill, knowledge or specialism which the Supplier has or holds out;
 - (b) the Services shall conform with all descriptions and specifications provided to the University by the Supplier; and
 - (c) the Services shall be provided in accordance with all applicable legislation from time to time in force, and the Supplier shall inform the University as soon as it becomes aware of any changes in that legislation and the Supplier shall obtain and maintain all necessary licences and consents.
- 6.3 The University's rights under the Contract are in addition to the statutory terms implied in favour of the University by the Supply of Goods Act 1979, the Supply of Goods and Services Act 1982 and any other statute or regulation relating to the supply of Goods and/or Services.

6.4 The provisions of this clause 6 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted goods and/or services or any remedial services provided by the Supplier.

7. INSPECTION AND TESTING OF THE GOODS

7.1 At any time prior to delivery of the Goods to the University the University shall have the right to inspect and test the Goods and the Supplier grants to the University access to its premises, where the Goods are stored, for this purpose following an agreed inspection time.

7.2 If the results of such inspection or testing cause the University to be of the opinion that the Goods do not conform or are unlikely to conform with the Contract or to any specification, sample or pattern supplied or advised by the University to the Supplier, the University shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity, at the Supplier's cost, and in addition the University shall have the right to require and witness further testing and inspection.

7.3 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

8. DELIVERY OF THE GOODS AND PERFORMANCE OF THE SERVICES

8.1 The Goods shall be delivered, carriage, duties and levies paid by the Supplier, to the University's place of business or to such other place of delivery as is agreed by the University in writing prior to delivery of the Goods and shall be properly packed and secured in such a manner as to enable them to reach their destination in good condition. The Supplier shall off-load the Goods at its own risk and expense as directed by the University, acting reasonably.

8.2 The date(s) or period(s) for the delivery of the Goods and/or supply of the Service will be as specified on the Order or such other date(s) or period(s) as specified by the University in writing prior to the delivery of the Goods and/or supply of the Services.

8.3 Time for delivery of the Goods and supply of the Services shall be of the essence.

8.4 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

8.5 Unless otherwise stipulated by the University in the Order, delivery of the Goods shall only be accepted by the University in normal business hours, being 8am to 5pm on a Business Day.

- 8.6 Delivery of the Goods shall be completed on the completion of unloading the Goods at the agreed location.
- 8.7 If the Supplier requires the University to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the University and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 8.8 Where the University agrees in writing to accept delivery of the Goods by instalments the agreement shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the University at its option to treat the whole agreement as repudiated.
- 8.9 If the Goods are delivered to the University in excess of the quantities ordered the University shall, at its option, accept or reject the excess and shall not be bound to pay for the excess. Any excess shall be and remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 8.10 If the Goods are delivered to the University in lower quantities than ordered by the University the University shall, at its option, accept or reject the Goods and where the University accepts the Goods, it shall be entitled to a pro rata price deduction. Any rejected Goods shall be and remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 8.11 The University shall not be deemed to have accepted the Goods or the products of the Services until it has had a reasonable time to inspect them following delivery of the Goods or completion of the Services or within a reasonable time after any latent defect in the Goods has become apparent. Any delivery note or other document signed by the University on or shortly after delivery of the Goods or completion of the Services shall operate only as an acknowledgement of delivery or completion and shall not be construed as an acceptance of the Goods and/or the Services.
- 8.12 The University shall have the right to require the Supplier to remove immediately from the University's Premises, or refuse access to the University's Premises, any employee or subcontractor who in the sole opinion of the University misconducted himself or been negligent or incompetent, without incurring any responsibility to the Supplier for any additional costs or time.
- 8.13 The Supplier shall render such reports to the University on the performance of the Contract, and attend such meetings, as may reasonably be required by the University.
- 8.14 The Supplier shall nominate a suitable representative to attend all such meetings. The representative shall be fully conversant at all times with the performance of the Contract. This representation will normally be the key authorised representative referred to at clause 4.4(b).

9. RISK/PROPERTY

9.1 The Goods shall remain at the risk of the Supplier until delivery to the University is complete (including off-loading and stacking in accordance with clause 8.1) when ownership of the Goods shall pass to the University.

10. SUPPLIER'S EQUIPMENT

10.1 The Supplier shall not bring any Supplier's Equipment onto the University's premises without obtaining the University's prior written consent.

10.2 All Supplier's Equipment brought onto the University's premises shall be at the Supplier's own risk and the University will have no liability for any loss of or damage to any Supplier's Equipment unless the Supplier is able to demonstrate that such loss or damage was deliberately or recklessly caused or contributed by the University's fault.

10.3 On completion of the Services, the Supplier shall remove the Supplier's Equipment together with any other materials which the Supplier used to perform the Services and, at the Supplier's cost, will leave the premises in a clean, safe and tidy condition and make good any damaged caused to the University's premises and or property by the Supplier's Equipment.

11. PRICES AND PAYMENT

11.1 In consideration of the supply of the Goods and/or the Services by the Supplier, the University shall pay the prices of the Goods and/or the Services as set out in the Contract. Prices for the Goods and/or the Services shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate.

11.2 The Supplier shall invoice the University upon, but separately from, despatch of the Goods to the University.

11.3 Services shall be charged on a time and materials basis, a fixed price basis or a combination of both.

11.4 Where the Services are charged on a time and materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates for the Supplier's Team, as agreed in writing by the University;
- (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour Business Day, worked between 8.00 am and 5.00 pm;
- (c) the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's Team unless it has the University's prior written consent to do so;
- (d) the Supplier shall ensure that the members of the Supplier's Team promptly and accurately complete time sheets recording time spent on the Services, and, subject

to the written approval of them by the University, the Supplier shall use such time sheets to calculate the charges covered by the invoice; and

- (e) the Supplier shall invoice the University in arrears for its charges for time and for expenses and materials (together with VAT where appropriate) as permitted by the Contract for the period concerned.
- 11.5 Where the Services are provided for a fixed price, the total price for the Services shall be paid to the Supplier in instalments, as specified in the Contract. The Supplier shall invoice the University for the charges that are then payable, together with expenses and the costs of materials (together with VAT, where appropriate) as permitted by the Contract.
- 11.6 Prices for the Services shall be inclusive of all costs, expenses and outlays unless permitted otherwise in the Contract.
- 11.7 Where the Supplier submits an invoice to the University in accordance with this clause 11, the University will consider and verify that invoice in a timely fashion.
- 11.8 The University shall pay each verified invoice to the Supplier's nominated bank account no later than 30 days from the date on which the University determines that the invoice is valid and undisputed.
- 11.9 If the University fails to comply with clause 11.7 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.8 after 30 days have passed.
- 11.10 Invoices covering payment in respect of materials purchased by, or services provided to, the Supplier, or for reimbursement of expenses, shall be payable by the University only if accompanied by relevant receipts being no more than one calendar month old and relating solely to the Goods and/or Services and if permitted by the Contract.
- 11.11 Without prejudice to any other right or remedy it may have, the University reserves the right to set off any amount owing at any time to it by the Supplier whether under the Contract or otherwise against any amount payable by the University to the Supplier under the Contract.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 General

- (a) In the absence of prior written agreement by the University to the contrary, all right, interest and title in the Intellectual Property Rights created by the Supplier:
 - (i) in the course of performing the Services; or
 - (ii) exclusively for the purpose of performing the Services,shall vest in the University upon creation.
- (b) The Supplier hereby assigns to the University, with full title guarantee, all the rights, interest and title in the Intellectual Property Rights which may subsist. This

assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier.

- (c) The Supplier shall waive or procure a waiver, at its cost, of any moral rights subsisting in copyright produced from, or arising as a result of, the performance of the Contract.
- (d) The Supplier shall, at its cost and expense, do or procure to be done all such further acts and things, and execute or procure the execution of all such other documents, as the University may from time to time reasonably require in order to give the University the full benefit of clause 12.1(a) above, whether in connection with any registration of title or other similar right or otherwise.

12.2 **Intellectual Property Rights owned by the University at the Services Start Date**

The University hereby grants to the Supplier, with effect from the Services Start Date, for the duration of the Contract, a non-exclusive royalty-free licence to use, operate, copy and modify the Intellectual Property Rights owned by the University at the Services Start Date for the purpose only of fulfilling the Supplier's obligations under the Contract.

12.3 **Intellectual Property Rights owned by the Supplier at the Services Start Date**

Where, in connection with the Contract, the Supplier uses any Intellectual Property Rights which does not fall within clause 12.1(a)(i) or 12.1(a)(ii) and which is owned by the Supplier, the Supplier shall grant to the University, or shall procure that the University is granted (without charge to the University and for the benefit of the University and all companies within the University's Group) a perpetual, non-exclusive, transferable, royalty-free licence to use, adapt, maintain and support such Intellectual Property Rights, which licence shall include the right for any person providing services to the University to use, adapt, maintain and support such Intellectual Property Rights for the benefit of the University.

12.4 **Third Party Products**

- (a) The Supplier shall obtain the consents of all relevant third parties to the use by the Supplier of any third party software, documentation and other materials (including, without limitation, software and know-how) and Intellectual Property Rights therein ("**Third Party Products**") which is required by the Supplier for the provision of the Services and which the University is not already permitted to use;
- (b) If the Supplier fails to obtain such consent, the Supplier agree to use alternative Third Party Products which may replace those in respect of which consent has not been or cannot, except at unreasonable cost, be obtained;
- (c) The Supplier shall procure that any licences for Third Party Products reasonably necessary for the provision of the Services are perpetual, transferable, royalty-free and irrevocable and contain terms which will allow the University on termination of the Contract to use, reproduce, modify, develop, maintain and support such Third Party Products or to engage a new services provider to do so.

12.5 **Warranty and Indemnity**

The Supplier hereby undertakes that it shall not infringe any third party Intellectual Property Rights in supplying the Services and or the Goods and that the University does not infringe and will not infringe any third party Intellectual Property Rights in using the Intellectual Property Rights vesting in it pursuant to clause 12.1(a) above. The Supplier shall during and after the performance of the Services and/or supply of the Goods, indemnify and keep indemnified and hold the University harmless from and against any actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the University may suffer or incur as a result or in connection with any infringement or alleged infringement of third party Intellectual Property Rights.

13. **INDEMNITY**

13.1 The Supplier shall indemnify and hold the University harmless from all claims and all direct, indirect or consequential liabilities, loss of profits, loss of business, depletion of goodwill and similar losses, costs (including the cost of replacement goods or services), proceedings, damages 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) the breach of any warranty in relation to the Goods or Services, or
- (b) any claim that the Deliverables infringe, or their importation, use or resale infringes, the Intellectual Property Rights of any person, or
- (c) any liability under the Consumer Protection Act 1987 in respect of the Goods.

13.2 The provisions of clause 13.1 shall survive termination or expiry of the Contract, however arising.

13.3 The Supplier shall maintain and keep in force during the period of the Contract adequate insurance covers with reputable insurers acceptable to the University and for a period of at least 6 years thereafter. The Supplier shall provide the University, at the University's request, with such evidence of the insurance policy as the University may request.

14. **CONFIDENTIALITY AND UNIVERSITY'S EQUIPMENT**

14.1 The Supplier shall keep in strict confidence all Information supplied by the University and all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the University, its employees, agents, consultants or subcontractors, and any other confidential information concerning the University's business or its products (the "**Confidential Information**") which the Supplier may obtain. Confidential Information shall not include information that:

- (a) is generally available to the public (other than as a result of the Supplier's, its employees, agents or subcontractors' breach of these Conditions);
- (b) was lawfully in the possession of the Supplier before the information was disclosed by the University as evidenced in writing; or

- (c) the parties agree in writing is not confidential.
- 14.2 The Supplier shall restrict disclosure of the Confidential Information to the Supplier's Team, and to such of its other employees, agents, consultants or subcontractors as need to know it for the purpose discharging the Supplier's obligations to the University.
- 14.3 Disclosure under clause 14.2 shall be limited to the extent required to perform the Supplier's obligations under the Contract and the Supplier shall ensure that the Supplier's Team and all other employees, agents or subcontractors are aware of the confidential nature of the Confidential Information and are subject to obligations of confidentiality corresponding to those which bind the Supplier. Nothing in these Conditions shall prevent the Supplier from disclosing the Confidential Information to the limited extent required by law, any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the University as much notice of such disclosure as possible, and where legally able to do so, takes into account the reasonable requests of the University in relation to the content of such disclosure.
- 14.4 All Confidential Information supplied by the University, University's Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by the University to the Supplier shall, at all times, be and remain the exclusive property of the University subject to the rights of any third party, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the University. They shall not be disposed of or used other than in accordance with the University's written instructions or authorisation.
- 14.5 Upon the termination of the Contract, however caused, the Supplier shall promptly, at the University's request:
- (a) destroy or return to the University all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Confidential Information;
 - (b) erase all the University's Confidential Information from its computer systems; and
 - (c) certify in writing to the University that it has complied with the requirements of this clause, provided that the Supplier may retain documents and materials containing, reflecting, incorporating, or based on the University's Confidential Information to the extent required by law or any applicable governmental or regulatory authority, and to the extent reasonable to permit the Supplier to keep evidence that it has performed its obligations under the Contract.

15. PUBLICITY

- 15.1 The Supplier shall not make any press announcements or publicise the Contract or any Orders or make known that it is a supplier to the University in any way without the University's prior written consent.

15.2 The University shall be entitled to publicise the Contract and any Orders in accordance with any legal obligation upon the University, including any examination thereof by external auditors.

15.3 The Supplier shall not do anything which may damage the reputation of the University or bring the University into disrepute.

16. DURATION AND TERMINATION

16.1 The Contract shall come into force on the Commencement Date and shall continue for the period set out in the Contract unless and until terminated:

- (a) by the University giving to the Supplier at any time not less than 3 months written notice; or
- (b) by either party giving notice pursuant to clause 16.2;
- (c) by the University giving notice pursuant to clause 16.3.

16.2 Either party may immediately terminate the Contract by written notice to the other if the other commits any continuing or material breach of any of the provisions of the Contract and, in the case of such a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.

16.3 The University may immediately terminate the Contract by written notice to the Supplier where:

- (a) an encumbrancer takes possession or a receiver is appointed over, any of the Supplier's property or assets; or
- (b) the Supplier makes any voluntary arrangement with its creditors within the meaning of the Insolvency Act 1986 or becomes subject to an administration order; or
- (c) the Supplier has an administrator appointed in respect of it or is the subject of an application for an administration filed at any court or a notice of intention to appoint an administrator given to any person; or
- (d) the Supplier goes into liquidation or becomes bankrupt; or a petition is presented for the Supplier's winding up or bankruptcy; or
- (e) the Supplier ceases or threatens to cease, to carry on its business; or
- (f) the Supplier is the subject of any change of control (as defined in section 840 of the Income and Corporation Taxes Act 1988) or being an LLP or partnership is subject to a change in partner; or
- (g) the University reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly; or
- (h) any of the provisions of Regulation 73(1) of PCR 2015 apply; and

- (i) there is any other analogous event in any other jurisdiction.
- 16.4 On termination of the Contract for any reason, the Supplier shall immediately deliver to the University:
 - (a) all Information supplied by the University and University's Equipment and the Supplier shall certify to the University that it has not retained any copies of the University's Information, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 14.1; and
 - (b) all Information other than that supplied by the University and used by the Supplier specifically in the manufacture of the Goods or produced by the Supplier for the supply of the Services (**Resulting Information**) and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the University (to the extent that they have not already done so by virtue of clause 12.1), who shall be entitled to enter the premises of the Supplier to take possession of them.
- 16.5 If the Supplier fails to fulfil its obligations under clause 16.4, 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.
- 16.6 On termination of the Contract (however arising):
 - (a) the accrued rights and liabilities of the parties as at termination shall survive and continue in full force and effect;
 - (b) any clause in the Contract which expressly or by implication is intended to continue in force on or after termination of the Contract shall remain in full force and effect; and
 - (c) the Supplier shall immediately deliver to the University all Goods and Services whether or not then complete.

17. APPLICATION OF THE TUPE REGULATIONS ON THE COMMENCEMENT DATE

- 17.1 If the provision of the Services by the Supplier in replacement for the Incumbent Services results in a Relevant Transfer, then the contracts of employment of any Incumbent Transferring Employees shall transfer to the Supplier.
- 17.2 The University shall, subject to compliance with Data Protection Laws, provide the Employee Liability Information for any Incumbent Transferring Employees in its possession to the Supplier in accordance with the TUPE Regulations. The University gives no warranty as to the accuracy or completeness of the Employee Liability Information provided by it.
- 17.3 The parties shall co-operate to ensure that any requirement to inform and consult with the Incumbent Transferring Employees as a consequence of a Relevant Transfer under clause 17 will be fulfilled.

17.4 The Supplier shall indemnify the University against any Claims arising from or as a consequence of:

- (a) any proposed changes to terms and conditions of employment of any Incumbent Transferring Employees the Supplier may consider taking on or after the Commencement Date;
- (b) any of the Incumbent Transferring Employees informing the University or the Incumbent Supplier that they object to being employed by the Supplier; and
- (c) any change in identity of the Incumbent Transferring Employees' employer as a result of the operation of the TUPE Regulations or as a result of any proposed measures the Supplier may consider taking on or after the Commencement Date.

17.5 If the costs associated with a TUPE transfer (including pension costs) are subsequently found to be lower than that provided for in the Supplier's pricing proposal, the Supplier shall make a corresponding reduction in the contract price.

18. APPLICATION OF THE TUPE REGULATIONS ON A SERVICE TRANSFER

18.1 The Supplier agrees that, subject to compliance with Data Protection Laws:

- (a) within 20 days of the earliest of:
 - (i) receipt of a notification from the University of a Service Transfer or intended Service Transfer; or
 - (ii) receipt of the giving of notice of early termination of the Contract or any part thereof; or
 - (iii) the date which is 12 months before the expiry of the term of the Contract, and, in any event, within 20 days of receipt of a written request of the University at any time, it shall provide a Supplier's Provisional Staff List and any information reasonably requested by the University regarding the persons on such Supplier's Provisional Staff List (including length of service, salary and benefits) to the University or, at the direction of the University, to a prospective Replacement Supplier;
- (b) at least 14 days prior to the expected Service Transfer Date, the Supplier shall prepare and provide to the University and/or, at the direction of the University, to a prospective Replacement Supplier, the Supplier's Final Staff List and the Employee Liability Information. The Supplier's Final Staff List shall identify any Transferring Employees; and
- (c) the University shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Employee Liability Information for informing any tenderer or other prospective Replacement Supplier.

- 18.2 The Supplier warrants that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Employee Liability Information will be true and accurate in all material respects.
- 18.3 During the 12 month period preceding the expiry of the term of the Contract, the Supplier shall not without the prior written consent of the University (such consent not to be unreasonably withheld or delayed):
- (a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of the Contract; or
 - (b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of the Contract; or
 - (c) move or deploy any Key Personnel away from the performance of the Services under the Contract.
- 18.4 The Supplier shall not knowingly do, or omit to do, anything which may adversely affect the orderly transfer of responsibility for provision of the Services.
- 18.5 The parties shall co-operate to ensure that any requirement to inform and consult with the Transferring Employees and/or employee representatives in relation to any Relevant Transfer which is a consequence of a Service Transfer will be fulfilled.
- 18.6 The Supplier shall indemnify the University and any Replacement Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the University or any Replacement Supplier including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- (a) any Claims made by any Transferring Employees in respect of any period on or before the Service Transfer Date;
 - (b) any Claims made by or in respect of any person employed or formerly employed by the Supplier other than a Transferring Employee for which it is alleged that the University or any Replacement Supplier may be liable by virtue of the Contract and/or the TUPE Regulations; and
 - (c) any act or omission of the Supplier in relation to its obligations under Regulations 11 and 13 of the TUPE Regulations.
- 18.7 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clause 18 to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier under clause 18 in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 18.8 Notwithstanding clause 18.7, it is expressly agreed that the parties may by agreement rescind or vary clause 18 without the consent of any other person who has the right to enforce the terms of clause 18 or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

19. NON-SOLICITATION

- 19.1 Except in respect of any transfer of employees pursuant to clauses 17 or 18, the Supplier shall not (except with the prior written consent of the University) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the University, or offer a contract of employment or consultancy to, any person employed or engaged by the University with whom they came into contact with in connection with the negotiation or performance of the Contract at any time during the term of the Contract or for a further period of 12 months after the termination of the Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the employees of the University.
- 19.2 If the Supplier commits any breach of clause 19.1, the Supplier shall, on demand, pay to the University a sum equal to one year's basic salary or the annual fee that was payable by the University to that employee, worker or independent contractor plus the recruitment costs incurred by the University in replacing such person.

20. BRIBERY

- 20.1 The Supplier shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010, and with the University's anti-bribery and anti-corruption Policy (available at <http://www.bournemouth.ac.uk/about/policies/index.html> or on request from the University), as amended or updated by the University from time to time.
- 20.2 The Supplier shall ensure that any person associated with the Supplier who is performing Services or providing Goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 20 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the University for any breach by such persons of any of the Relevant Terms.
- 20.3 Breach of this clause 20 shall be deemed a material breach of the Contract.

21. REMEDIES

- 21.1 If any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with, any terms of the Contract or any Order, the University shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:
- (a) to cancel the Order and/or the Contract; or
 - (b) to reject the Goods (in whole or in part) and have the Goods returned to the Supplier at the Supplier's risk and cost on the basis that a full refund for the Goods will be paid immediately by the Supplier or a refund of the expenditure incurred by the University in obtaining substitute Goods from a third party; or

- (c) to refuse to accept the supply of any further Goods and/or Services by the Supplier and to require the immediate repayment by the Supplier of all advance sums previously paid by the University to the Supplier under the Contract and the cost incurred by the University in obtaining replacement services; or
- (d) to require the Supplier, without charge to the University, to carry out such additional work as is necessary to correct the Supplier's failure; and
- (e) in any case, to claim such damages as it may have sustained in connection with the Supplier's breach (or breaches) of the Contract not otherwise covered by the provisions of this clause 20.1.

22. FORCE MAJEURE

22.1 The University reserves the right to defer the date, for the duration of the force majeure event, for the delivery of the Goods or performance of, or payment for, the Services, or to terminate the Contract, if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes (whether involving the workforce of the University or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

23. VARIATION

23.1 No variation of the Contract shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

24. WAIVER

24.1 Failure to exercise, or any delay in exercising, any right or remedy provided under the Contract or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

24.2 No single or partial exercise of any right or remedy provided under the Contract or by law shall preclude or restrict the further exercise of that right or remedy.

24.3 A waiver (which may be given subject to conditions) of any right or remedy provided under the Contract or by law shall only be effective if it is in writing. It shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

24.4 A party that waives a right or remedy provided under the Contract or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

24.5 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

25. SEVERANCE

25.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions the Contract shall not be affected.

26. ENTIRE AGREEMENT

26.1 The Contract constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement, whether written or oral, between them relating to the subject matter of the Contract.

26.2 Each party acknowledges that, in entering into the Contract, it does not rely on any statement, representation, assurance or warranty, whether made negligently or innocently (**Representation**) of any person (whether a party to the Contract or not) other than as expressly set out in the Contract. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

26.3 Nothing in this clause shall limit or exclude any liability for fraud.

27. ORDER OF PRECEDENCE

27.1 In the event of any conflict between the following, the conflict will be resolved in this order of precedence:

- (a) the Award Letter;
- (b) any schedules attached to the Award Letter in the order they appear; and
- (c) these Conditions.

28. ASSIGNMENT

28.1 The Supplier shall not, without the prior written consent of the University, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

28.2 If the University consents to the Supplier subcontracting any of its rights or obligations under the Contract, the Supplier shall include in any such sub-contract:

- (a) payment provisions having the same effect as clause 11.7, clause 11.8 and clause 11.9; and

- (b) a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as clause 11.7, 11.8 and 11.9.

In this clause 28.2, a “sub-contract” means a contract between two or more suppliers at any stage of remoteness from the University in the supply chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract.

- 28.3 If the University consents to the Supplier sub-contracting any of its Contract rights or duties, the Supplier shall be responsible for its sub-contractors’ acts and omissions as if they were the acts and omissions of the Supplier.
- 28.4 The University may, at any time, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 28.5 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

29. NO PARTNERSHIP OR AGENCY

- 29.1 Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

30. RIGHTS OF THIRD PARTIES

- 30.1 Except as expressly provided elsewhere in the Contract, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

31. NOTICES

- 31.1 A notice given to a party under the Contract:
 - (a) shall be signed by or on behalf of the party giving it;
 - (b) shall be sent for the attention of the person at the address specified in this clause (or to such other address or person as that party may notify to the other, in accordance with the provisions of this clause); and
 - (c) shall be:
 - (i) delivered personally; or
 - (ii) sent by commercial courier; or

- (iii) sent by pre-paid first-class post or recorded delivery; or
- (iv) sent by airmail requiring signature on delivery.

31.2 The addresses for service of a notice shall be the address of the party specified in the Contract.

31.3 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

- (a) if delivered personally, at the time of delivery; or
- (b) if delivered by commercial courier, at the time of signature of the courier's receipt; or
- (c) if sent by pre-paid first-class post or recorded delivery, on the day after posting; or
- (d) if sent by airmail, five Business Days from the date of posting.

31.4 To prove delivery, it is sufficient to prove that if sent by pre-paid first-class post, the envelope containing the notice was properly addressed and posted.

31.5 The provisions of clause 31 shall not apply to the service of any process in any legal action or proceedings.

31.6 A notice required to be given under the Contract shall not be validly served if sent by e-mail and/or fax.

32. AUDIT

32.1 The Supplier will allow the University or its authorised representative access to all records relating to the Goods and/or the Services during the Contract term and for 12 months afterwards at any time during normal business hours for the purpose of auditing or otherwise inspecting them.

32.2 Should any audit or inspection of the records by the University or its authorised representative reveal that the University has been overcharged, the Supplier shall reimburse to the University the amount of the overcharge within 5 Business Days of receipt of notification of the same together with any interest at the rate of 3% above the Bank of England's base rate.

32.3 The Supplier will afford to the University all reasonable assistance in the carrying out of such audit. The University and its authorised representative will ensure that any confidential information obtained in the course of such an audit is kept in the strictest confidence and not used for any purpose other than the conduct of the audit.

33. RECORDS AND DATA PROTECTION

- 33.1 The Supplier will keep all records relating to the Goods and/or Services in legible form or in a manner capable of being reproduced in legible form.
- 33.2 The Supplier undertakes to carry out its obligations under the Contract strictly in accordance with its obligations under the Data Protection Laws.

34. OBSERVANCE OF LEGAL REQUIREMENTS

- 34.1 The Supplier shall carry out its obligations under the Contract in a manner that conforms with any relevant legal requirements in force during the period of the Contract.
- 34.2 Without prejudice to the generality of the foregoing, in carrying out its obligations under the Contract, the Supplier shall not commit an act of discrimination rendered unlawful by, and any subsequent amendments thereto, the Equality Act 2010, Gender Recognition Act 2004, Fixed Term Employees Regulations 2002, Part-time Workers Regulations 2000, Employment Equality Age Regulations 2006 and shall comply with the requirements of the Bribery Act 2010.

35. MODERN SLAVERY ACT

- 35.1 The Supplier shall, upon a request from the University, promptly give the University such information and documentation on the Supplier and each member of its supply chain as the University reasonably requires to show the steps the Supplier and each member of its supply chain have taken to ensure none of them has engaged in slavery or human trafficking as defined in section 54(12) of the Modern Slavery Act (**Act**). The Supplier warrants that any information and documentation supplied in response to such a request is materially accurate and complete.
- 35.2 The Supplier warrants that during the Contract neither the Supplier nor any member of its supply chain has committed or been investigated for, nor will commit, any act, or make any omission that, if it took place in England, would be an offence under the Act at the relevant time.
- 35.3 The Supplier shall have in place an appropriate system of due diligence, audit and training designed to ensure no slavery or human trafficking in its supply chain and compliance with the Act.
- 35.4 The Supplier shall notify the University as soon as it becomes aware of any actual or suspected slavery or human trafficking in its supply chain.
- 35.5 Any breach of the duties in this clause 35 shall give the University the right, by notice:
- (a) to require the Supplier to remove from the performance of this Contract any member of the supply chain whose acts or omissions have caused the breach; or
 - (b) to immediately terminate the Contract.

36. DISPUTE RESOLUTION

36.1 If any dispute arises in connection with the Contract, the parties will in the first instance attempt to resolve the dispute in good faith by senior level negotiations. Where the parties agree that it might be beneficial the parties will seek to resolve the dispute through mediation. If the dispute is not resolved through negotiation or mediation each party agrees that the courts of England shall have exclusive jurisdiction in connection with the resolution of the dispute.

37. GOVERNING LAW AND JURISDICTION

37.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England.

37.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).