

**CARDIFF UNIVERSITY PROCUREMENT SERVICES**

**STANDARD CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS  
AND/OR SERVICES**

**1. DEFINITIONS**

1.1 In these Conditions the following definitions apply:

<p>"Affiliate"</p>	<p>any entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the University. For purposes of this definition, the term "control" means the power (or, as applicable, the possession or exercise of the power) to direct, or cause the direction of, the management, governance, or policies of a given entity, directly or indirectly, through any applicable means (whether through the legal, beneficial, or equitable ownership, of more than fifty percent (50%) of the aggregate of all voting or equity interests or securities of such entity, through partnership, or through some other form of ownership interest, by contract, or other applicable legal document, or otherwise).</p>	<p>"Best Industry Practice"</p>	<p>means the highest degree of professionalism, skill and diligence in the relevant industry for the provision of comparable goods and/or services which are substantially similar to the Goods and/or Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the pricing structure and any other relevant factors</p>
<p>"Applicable Law"</p>	<p>means all applicable laws, statutes, enactments, regulations, declarations decrees, directives, legislative enactments, orders, binding decisions of a competent Court or Tribunal, regulations, rules, regulatory policies, guidelines, codes, other binding restrictions, regulatory permits and licences applicable under law which are in force from time to time during the term of the Contract, including the rules, codes of conduct, codes of practice, practice requirements and accreditation terms stipulated by any regulatory authority or body to which a party is subject from time to time, as the same are amended, consolidated, modified, re-enacted or replaced</p>	<p>"Bribery Laws"</p>	<p>means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010</p>
<p>"Authorised"</p>	<p>means signed by one of the authorised officers</p>	<p>"Cancellation Charges"</p>	<p>means the cancellation charges incurred by you and to be paid by us as a result of termination of the Contract pursuant to clause 14.1</p>
<p>"Background IPR"</p>	<p>means</p> <p>(a) Intellectual Property Rights owned by a party before the date of the Contract; and/or</p> <p>(b) Intellectual Property Rights created by a party independently of the Contract</p>	<p>"Charges"</p>	<p>means the charges which shall become due and payable by the University to you in respect of the Goods and/or Services as set out in the Purchase Order</p>
		<p>"Collection Date"</p>	<p>means the date for collection of the Goods, as specified in the Purchase Order</p>
		<p>"Collection Location"</p>	<p>means the location specified in the Purchase Order where the Goods will be collected from</p>
		<p>"Conditions"</p>	<p>means the standard terms &amp; conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the parties to the Contract</p>
		<p>"Confidential Information"</p>	<p>has the meaning set out in clause 23.1</p>
		<p>"Contract"</p>	<p>means the Purchase Order and these Conditions which form a legally binding Contract between you and us for the purchase of Goods and/or Services</p>
		<p>"Delivery Date"</p>	<p>means the date for delivery of the Goods, as specified in the Purchase Order</p>
		<p>"Delivery Location"</p>	<p>means the location specified in the Purchase Order to which you shall deliver, or procure the delivery of, Goods</p>
		<p>"EIR"</p>	<p>means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations</p>

<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government departments in relation to such legislation	<b>"Personnel"</b>	means all your employees, staff, other workers, agents and consultants and of any sub-contractors who are engaged in the provision of the Goods and/or Services from time to time
<b>"FOIA Code"</b>	means the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA or any revision or replacement of such code	<b>"Prevent"</b>	means the guidance for specified authorities in England and Wales on the duty in the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism
<b>"Force Majeure Event"</b>	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract but excluding any labour or trade dispute, strike, industrial action or lockout confined to your workforce or the workforce of any of your sub-contractors	<b>"Purchase Order"</b>	means our purchase order to which these Conditions refer to
<b>"Goods"</b>	means the products, materials, articles and works described in the Purchase Order	<b>"Services"</b>	means the services described in the Purchase Order
<b>"Information"</b>	means, for the purposes of clause 28, information as that term is defined in section 84 of the FOIA	<b>"Specification"</b>	means any drawings, plans, data or other information relating to the Goods or Services
<b>"Intellectual Property Rights"</b>	means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and services marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world	<b>"TUPE Regulations"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, re-enacted or extended from time to time)
<b>"Modern Slavery Statement"</b>	means the University's modern slavery statement available at: <a href="https://www.cardiff.ac.uk/public-information/corporate-information/modern-slavery">https://www.cardiff.ac.uk/public-information/corporate-information/modern-slavery</a>	<b>"University Assets"</b>	means any materials, plant or equipment owned or held by us and provided to you for use in providing the Goods and/or Services
<b>"Necessary Consents"</b>	means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the provision of the Goods and/or Services	<b>"University's Policies and Procedures"</b>	means our policies and procedures as notified to you from time to time and includes the Safety, Health, Wellbeing and Environment Policy (available at <a href="https://www.cardiff.ac.uk/public-information/policies-and-procedures/health-safety-and-environment">https://www.cardiff.ac.uk/public-information/policies-and-procedures/health-safety-and-environment</a> ), Dignity at Work & Study Policy (available at <a href="https://www.cardiff.ac.uk/public-information/policies-and-procedures/dignity-at-work-and-study">https://www.cardiff.ac.uk/public-information/policies-and-procedures/dignity-at-work-and-study</a> ) and the Counter-Fraud and Anti-Bribery Policy (available at ) or the equivalent policies of an Affiliate.
<b>"Order Amendment"</b>	means our Authorised Purchase Order amendment	<b>"University's Premises"</b>	means our premises, details of which are set out in the Purchase Order, which is to be made available for your use for the provision of the Goods and/or Services on the terms set out in the Contract
<b>"Package" or "Packaging"</b>	means any type of package including bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers	<b>"We", "Us", "Our" and "University"</b>	means Cardiff University, a higher education institution and charity registered in England and Wales under charity number 1136855 established under Royal Charter (RC000089) whose address is Park Place, Cardiff CF10 3AT and/or its Affiliate(s) named in the Purchase Order.
		<b>"Working Day"</b>	means Monday to Friday, excluding any public holidays in England and Wales or any other day that the University is closed for business

"You", "Your" and "Supplier" means the person, firm or company to whom the Purchase Order is addressed and any employees, sub-contractors or agents of said person, firm or company

- 1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.3 A reference to these Conditions includes its schedules and appendices.
- 1.4 The headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of these conditions.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 If there is any conflict or inconsistency between the provisions in the Purchase Order and these Conditions, such conflict or inconsistency shall be resolved according to the following order of priority:-
  - 1.6.1 these Conditions; and
  - 1.6.2 the Purchase Order.

## 2. BASIS OF PURCHASE

- 2.1 The Purchase Order constitutes an offer by us to purchase the Goods and/or Services subject to these Conditions.
- 2.2 These Conditions shall apply to the Contract to the exclusion of any other terms of sale or other conditions of trade on which you may seek to rely. Your terms on order acknowledgements, delivery notes, invoices or any other of your standard documentation are excluded unless specific clauses are agreed in writing by the parties.
- 2.3 The Purchase Order will be deemed to be accepted unconditionally by you if no detailed counter-offer is received within 14 days of its date, subject to clause 2.2 above.
- 2.4 The delivery of Goods or the provision of Services in response to the Purchase Order or Order Amendment shall imply that you have accepted these Conditions.

## 3. SPECIFICATIONS

- 3.1 You acknowledge and confirm that we delivered or made available to you all of the information and documents that you consider necessary or relevant for the performance of your obligations under the Contract;
- 3.2 Save as provided in the Contract, no representations, warranties or conditions are given or assumed by the University in respect of any information which is provided to you by the University and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3.3 You warrant and represent that you have the right, power and authority to enter into the Contract and grant

to the University the rights (if any) contemplated in the Contract and to supply the Goods and/or perform the Services.

### 3.4 You warrant and represent that the Goods:-

- 3.4.1 shall for a period of 12 months from the Delivery Date or Collection Date (the "**Warranty Period**"):
  - (a) be free from defects in design, materials and workmanship;
  - (b) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
  - (c) comply with all Applicable Laws;
  - (d) conform in all material respects to the Specification; and
  - (e) be fit for any purpose set out in the Purchase Order;
- 3.4.2 the Goods supplied shall not infringe the Intellectual Property Rights of any third party.

- 3.5 You warrant that any electrical and/or electronic equipment supplied by you under the Contract that operates directly with UK mains voltage 230 +/- 10 volts is capable of running reliably over the entire voltage range of 207-253 volts without early failure and, in particular, with no degradation when running continuously at the higher voltage range of 240-253 volts. Performance data demonstrating this capacity will be required as appropriate.

### 3.6 You warrant and represent that the Services:-

- 3.6.1 shall be performed in accordance with Best Industry Practice;
- 3.6.2 performed shall comply with all Applicable Laws;
- 3.6.3 performed shall conform in all material respects to the Specification;
- 3.6.4 shall be performed by appropriately experienced, trained and qualified personnel;
- 3.6.5 performed shall not infringe the Intellectual Property Rights of any third party; and
- 3.6.6 performed shall be fit for any purpose set out in the Purchase Order.

- 3.7 Without limiting any other remedies to which it may be entitled, we may reject any Services that do not comply with clause 3.6 and you shall, at our option, promptly remedy, re-perform or refund the Charges of any such Services.

- 3.8 The provisions of the Contract shall apply to any Goods that are repaired or replaced, and/or any Services that are remedied or re-performed pursuant to clause 3.7.

- 3.9 Our rights under the Contract are in addition to, and do not exclude or modify, the rights and conditions contained in sections 13 to 15 of the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982, sections 12 to 16.
- 3.10 You shall indemnify us in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by us as a result of or in connection with:-
- 3.10.1 breach of any warranty given by you in relation to the Goods and/or Services;
- 3.10.2 any claim that the Goods and/or Services infringe, or their use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any person, except to the extent that the claim arises from you compliance with our Specification; and
- 3.10.3 any act or omission by your or your Personnel in connection with the supply of the Goods and/or performance of the Services.
- 3.11 You shall not unreasonably refuse any request by us to inspect and test the Goods during manufacture, processing, or storage at your premises or any third party premises prior to despatch, and you shall provide us with all facilities reasonably required for inspection and testing.
- 4. YOUR OBLIGATIONS**
- 4.1 You shall:
- 4.1.1 comply in all respects with the University's Policies and Procedures;
- 4.1.2 comply with any additional or special responsibilities and obligations specified in the Purchase Order;
- 4.1.3 co-operate with us in all matters arising under the Contract or otherwise relating to the supply of the Goods and/or performance of the Services;
- 4.1.4 use the University's Premises for the sole purpose of providing the Goods and/or Services;
- 4.1.5 provide all information, documents, materials, data or other items necessary for the provision of the Goods and/or Services to the University in a timely manner;
- 4.1.6 inform us in a timely manner of any matters (including any health, safety or security requirements) which may affect the provision of the Goods and/or Services;
- 4.1.7 ensure that all tools, equipment, materials or other items used in the provision of the Services are suitable for the performance of the Services, in good condition and in good working order;
- 4.1.8 obtain and maintain all Necessary Consents required to enable you to supply the Goods and/or perform the Services and otherwise comply with your obligations under the Contract; and
- 4.1.9 ensure that there is an adequate number of Personnel to provide the Services properly.
- 4.2 You shall perform the Services in accordance with any commencement or end dates as specified in the Purchase Order. Services which do not have specified commencement or end dates shall be performed by you as soon as possible but, in any event, within a reasonable period of time.
- 5. DELIVERY**
- 5.1 The Purchase Order shall specify whether the Goods are to be:
- 5.1.1 delivered by you, or by a carrier appointed by you, to the Delivery Location on the Delivery Date(s); or
- 5.1.2 made available for our collection at the Collection Location. We shall collect the Goods within the period specified in the Purchase Order.
- 5.2 The Goods may be delivered by instalments only if specified in the Purchase Order.
- 5.3 Delivery of the Goods shall be accompanied by a delivery note stating:
- 5.3.1 the date of the order;
- 5.3.2 the University's purchase order number;
- 5.3.3 your relevant details;
- 5.3.4 the product numbers, type and quantity of Goods in the consignment;
- 5.3.5 any special handling instructions; and
- 5.3.6 any additional information requested by us as set out in the Purchase Order.
- 5.4 Time of delivery is of the essence. Subject to clause 5.5, if you fail to deliver the Goods or make them available for collection at the time specified in the Purchase Order, we may:
- 5.4.1 refuse to accept any subsequent attempts to deliver the Goods and terminate the Contract immediately by serving notice in writing on you;
- 5.4.2 procure similar goods from an alternative supplier; and
- 5.4.3 recover from you all losses, damages, costs and expenses incurred by us arising from your default.

- 5.5 If we do not take delivery of the Goods for any reason other than your breach of the Contract, you shall store and insure the Goods pending delivery, and we shall pay your reasonable storage and insurance charges.
- 5.6 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by your staff, suppliers or carriers at the Delivery Location. Under no circumstances shall Goods be left unattended at any premises of the University. It is your responsibility to obtain a receipt for all Goods delivered. We disclaim all responsibility for the security of Goods delivered and left on our premises by you, or your carrier, if you fail to obtain a receipt for their acceptance from a person Authorised to receive them. All valid deliveries will be signed for as "unexamined" on the basis of the number of packages received.
- 6. PACKAGING**
- 6.1 You shall ensure that the Goods are appropriately packaged for delivery to ensure that they are not damaged or lost in transit and will use reasonable endeavours to ensure the Goods are not excessively packaged.
- 6.2 The Goods shall be marked in accordance with our instructions and any applicable regulations or requirements of the carrier.
- 6.3 Hazardous Goods shall have prominent warnings in English and any other language as may be specified in the Purchase Order and/or are required to comply with Applicable Laws on all packing and documents.
- 6.4 Unless otherwise stated in the Purchase Order, all packaging shall be deemed to be collected and removed by you at your own expense. We shall not be obliged to return to you any packaging or packing materials for the Goods.
- 7. VOLUMES & VALUES OF BUSINESS**
- Any written or verbal estimates of potential volumes or values of business which may be achieved under the Contract, which are not part of a Purchase Order, are provided only for guidance and are not binding. No guarantee is given regarding volumes or the overall extent to which the Contract will be used.
- 8. DEFECTS IN GOODS**
- 8.1 If any Goods do not comply with clause 3.3, we may, at our option:
- 8.1.1 reject the whole or part of the Goods in which event any payment previously made therefore shall be refunded to us;
  - 8.1.2 require you at your own cost either to immediately replace the Goods or to repair or rectify any defect; or
  - 8.1.3 undertake or procure, at your risk and expense, the replacement of the Goods or the repair or rectification of any defect.
- 8.2 Risk and title in any rejected Goods shall pass back to you at the point at which the Goods are collected or, if earlier, ten Working Days from the date on which we notify you of the rejection.
- 8.3 Warranties in respect of Goods replaced and/or rectified shall be renewed from the dates you replaced and/or rectified the Goods.
- 8.4 In addition to our remedies under clause 8.1, you shall indemnify us against all loss, damages, costs, charges, expenses or claims (including without limitation any claims by third parties) arising by reason of any failure of the Goods to comply with any other terms of the Contract whether express or implied by statute, common law, custom or otherwise or by reason of any act or omission of you, your Personnel or sub-contractors in the performance of the Contract.
- 8.5 Where we require you to rectify a defect:
- 8.5.1 the cost of collecting the Goods from and returning them to us shall be borne by you;
  - 8.5.2 the cost of any additional inspection or testing of the replaced or repaired Goods shall be borne by you; and
  - 8.5.3 you shall pay to us a sum equal to the cost of any additional insurance considered reasonably necessary by us.
- 8.6 Any inspection, test, checks or approval by or on behalf of the University (or any failure to inspect, test, check, approve or make any complaint to you), shall in no event be construed as acceptance of any Goods supplied by you or any of your sub-contractors and shall in no way relieve you from any obligation or liability under the Contract or otherwise.
- 9. ACCEPTANCE AND REJECTION OF GOODS**
- 9.1 We shall not have accepted, or be deemed to have accepted the Goods, until the Goods have been delivered to the Delivery Location or Collection Location and we have received a delivery note.
- 9.2 Any acceptance of defective, late or incomplete Goods or any payment made in respect thereof, shall not constitute a waiver of any of our rights and remedies, including our right to reject any Goods.
- 9.3 We shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity specified in the Purchase Order. If we elect not to accept such over-delivered Goods, we shall be entitled to give you written notice to remove them within 5 Working Days of receipt by you of such notice. If you fail to arrange removal, we shall be entitled to dispose of such Goods and charge you for the costs of such disposal and any other expenses incurred by us as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods). The risk in any over-delivered Goods shall remain with you until they are collected on your behalf or disposed of or purchased by us, as appropriate.
- 9.4 Any rejected Goods may be returned to you by the University at your cost and risk. You shall pay us a

reasonable charge for storing and returning any of the Goods over-delivered or rejected.

## 10. RISK AND TITLE

10.1 Risk in the Goods shall pass to us on the later of:

10.1.1 delivery or collection of the Goods as set out in clause 5; or

10.1.2 our acceptance of the Goods as set out in clause 9.

10.2 Title to the Goods shall pass to us on the sooner of:

10.2.1 payment by us for the Goods; or

10.2.2 delivery or collection of the Goods as set out in clause 5.

10.3 Any Goods for which we have paid but which have not been delivered shall be clearly identified as the property of the University and stored in safe and suitable conditions by you and in accordance with any instructions given by us.

10.4 Neither you nor any other person shall have a lien on, right of stoppage in transit or other rights in or to any Goods where title has vested in the University or are based on any specifications or materials of the University, and you shall ensure that relevant third parties accept the exclusion of such lien and rights.

## 11. COMPLIANCE

11.1 You shall (and shall procure that your Personnel shall) perform your obligations under the Contract (including those in relation to the Goods and/or Services) in accordance with:-

11.1.1 all Applicable Laws regarding health and safety; and

11.1.2 the University's Policies and Procedures.

## 12. UNIVERSITY'S PREMISES AND ASSETS

12.1 We shall provide you (and your sub-contractors) with access to such parts of the University's premises as you reasonably require for the purposes only of supplying the Goods and/or providing the Services. Your right of access will terminate upon termination of the Contract.

12.2 You shall ensure that:-

12.2.1 any University Assets used by you are maintained (or restored at the end of the Contract) in the same or similar condition as at the date of the Contract (fair wear and tear excepted) and are not removed from University Premises unless expressly permitted under the Contract or by the University's representative; and

12.2.2 any University Assets are used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions.

12.3 We may refuse to grant access to, and remove, any of your Personnel who do not comply with any of the University's Policies and Procedures, or if they otherwise present a security threat.

12.4 We shall maintain and repair the University Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of you or your representatives (fair wear and tear excluded) the costs incurred by us in maintaining and repairing the same shall be recoverable from you as a debt.

12.5 You shall notify us immediately on becoming aware of any damage caused by you, your Personnel or sub-contractors to any property of the University, to any of the University's Premises or to any property of any other recipient of the Services in the course of providing the Services.

12.6 You shall indemnify us against all and any damage to the University Premises and the University Assets caused by the same.

## 13. CHARGES AND PAYMENT

13.1 In consideration of the provision of the Goods and/or Services by you in accordance with the Contract, we shall pay you the Charges.

13.2 Unless otherwise stated in the Purchase Order, the Charges are fixed and are the entire price payable by us in respect of the Goods and/or Services and include, without limitation, any royalties, licence fees, supplies and all consumables used by you, travel costs, accommodation expenses and the cost of your Personnel.

13.3 No increase in the Charges may be made whether on account of increased material, labour or transport costs, fluctuation in exchange rates or otherwise without our prior consent in writing.

13.4 Subject to any agreed stage payment profile set out in the Purchase Order, you shall be entitled to invoice us for payment of the:

13.4.1 Charges in respect of the Goods on delivery of the Goods; and

13.4.2 Charges in respect of the Services in accordance with the terms set out in the Purchase Order.

13.5 We shall pay you any Charges due under such invoice within 30 days from the date on which we have determined that the invoice is valid and undisputed. Your invoice must be addressed to the department indicated in the Purchase Order and must quote the full purchase order number.

13.6 The Charges are stated as exclusive of VAT and VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

13.7 If we fail to make payment of any undisputed invoices in accordance with the Contract, you shall be entitled, in addition to any unpaid Charges that should properly have been paid, to simple interest on that amount (accruing on a daily basis from the final date for

payment until the date of actual payment, whether before or after judgment). Such interest shall be calculated at a rate of 2% per year above the Bank of England base rate which is current at the date the payment became due. It is agreed that the provisions of this clause 13.7 constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998. You shall not suspend the supply of the Goods and and/or the performance of the Services if any payment is overdue.

13.8 We may at any time, set off any liability of your liability to us against any liability of ours to you, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise of our rights under this clause shall not limit or affect any other rights or remedies available to us under the Contract or otherwise.

#### 14. TERMINATION

14.1 We shall be entitled to terminate the Contract in respect of all or part only of the Goods and/or the Services without penalty by giving you written notice at any time prior to delivery of the Goods or performance of the Services unless such Goods have been specially manufactured to our requirements.

14.2 Subject to clause 14.3, if the Contract is terminated pursuant to clause 14.1 and the Goods have been specifically manufactured to our specification, on receipt of validly issued and properly documented evidence we shall pay you any applicable and permitted Cancellation Charges.

14.3 To the maximum extent possible, you shall mitigate all costs relating to the terminated Contract immediately upon receipt of a notice of termination under clause 14.1. The amounts specified in clause 14.2 shall be your sole and exclusive remedy for any termination of the Contract by us.

14.4 We may terminate the Contract immediately by giving written notice to you at any time if you:

14.4.1 commit a material breach that cannot be remedied;

14.4.2 commit a material breach that can be remedied but fail to remedy that breach within 30 days of receipt of a written notice issued by the party not committing the breach setting out the breach and the requirement to remedy it;

14.4.3 commit a series of persistent breaches which, when taken together, amount to material breach;

14.4.4 are subject to a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010);

14.4.5 cease, or threaten to cease, to carry on all or substantially the whole of your business;

14.4.6 are unable to pay your debts either within the meaning of section 123 of the Insolvency Act 1986 or we reasonably believe that to be the case;

14.4.7 have a receiver, manager, administrator or administrative receiver appointed over all or any part of your undertaking, assets or income;

14.4.8 have a resolution passed for your winding up;

14.4.9 have a petition presented to any court for your winding up or an application is made for an administration order, or any winding-up or administration order is made against you;

14.4.10 have a freezing order made against you; or

14.4.11 take any steps in anticipation of, or have no realistic prospect of avoiding, any of the events or procedures described in clauses 14.4.5 to 14.4.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

14.5 If the Contract is terminated by us pursuant to clause 14.4 such termination shall be at no loss or cost to us and you hereby indemnify us against any such losses or costs which we may suffer as a result of any such termination.

#### 15. CONSEQUENCES OF TERMINATION

15.1 On termination of the Contract (or where reasonably so required by us before such completion):

15.1.1 you shall immediately stop the performance of all Services unless expressly requested otherwise in relation to all or part of the Services by us in writing;

15.1.2 you shall promptly invoice us for all Goods delivered and/or all Services performed but not yet invoiced and/or refund any sums paid in advance for Services not performed;

15.1.3 you shall within five Working Days return any materials (including any University Assets) of the University then in your possession or control;

15.1.4 you shall procure that all Confidential Information, data and other material belonging to us (and all media of any nature containing information and data belonging to us or relating to the Goods and/or Services), shall be delivered to us forthwith and your representative shall certify full compliance with this clause;

15.1.5 we shall on reasonable notice provide you with such access as you reasonably require to the University's Premises to remove any of you equipment and all such

- equipment shall be promptly removed by you; and
- 15.1.6 all rights granted to you under the Contract shall immediately cease.
- 15.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 18 (Indemnities), clause 17 (Limitation of Liability), clause 19 (Insurance), clause 21 (Data Protection), clause 23 (Confidentiality), clause 27 (Prevention of Bribery, Anti-Facilitation of Tax Evasion and Modern Slavery), and this clause 15 (Consequences of termination), shall remain in full force and effect.
- 15.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of expiry or termination of the Contract.
- 16. ORDER AMENDMENT**
- 16.1 We shall have the right, before delivery or collection of the Goods and or performance of the Services, to send you an Order Amendment (including but not limited to any change relating to the functionality, capacity, scalability, or performance criteria).
- 16.2 If the Order Amendment will result in a change to the Charges, Delivery Date, Collection Date, and/or commencement or end dates for the performance of the Services then you must suspend performance of the Contract and notify us without undue delay of the new Charges, Delivery Date, Collection Date, and/or commencement or end dates for the performance of the Services.
- 16.3 You must allow us a reasonable period of time to consider any new Charges, Delivery Dates, Collection Dates, and/or commencement or end dates for the performance of the Services. The Order Amendment shall take effect only if our representative accepts in writing the new Charges, Delivery Dates, Collection Dates, and/or commencement or end dates for the performance of the Services.
- 16.4 If our representative declines the amendments, we shall have the right either to confirm that the performance of the Contract shall immediately resume as though the Order Amendment had not been issued, or that the original Purchase Order may be cancelled.
- 17. LIABILITY**
- 17.1 Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with the Contract.
- 17.2 Subject to clause 17.1 and clause 17.4, your aggregate liability:-
- 17.2.1 is unlimited in respect of:-
- (a) any indemnity set out in the Contract;
- (b) damage to our property (including the University's Premises) caused by the Goods not complying with clause 3.3;
- (c) any breach of clause 27 (Prevention of Bribery, Anti-Facilitation of Tax Evasion and Modern Slavery); and
- 17.2.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited in respect of all liabilities arising under the Contract, to an amount equal to one hundred and twenty five percent (125%) of the Charges paid or payable by the University to you.
- 17.3 Subject to clause 17.1 and clause 17.4, our aggregate liability to you for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract (other than a failure to pay any of the Charges that are properly due and payable and for which we shall remain fully liable), shall be limited in respect of all liabilities arising under the Contract, to an amount equal to the Charges paid or payable by the University to you.
- 17.4 Notwithstanding any other provision of the Contract neither party limits or excludes its liability for:-
- 17.4.1 fraud or fraudulent misrepresentation;
- 17.4.2 death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
- 17.4.3 breach of any obligation as to title implied by statute; or
- 17.4.4 any other liability for which may not be limited under any Applicable Law.
- 18. INDEMNITY**
- 18.1 You shall indemnify us and keep us indemnified against all liabilities, costs, expenses, damages and losses incurred by us arising out of or in connection with:-
- 18.1.1 your breach or negligent performance or non-performance of the Contract (including where we are in breach of any Applicable Law as a result of any act or omission of you);
- 18.1.2 your failure to deliver the Goods in accordance with clause 5;
- 18.1.3 your failure to perform the Services in accordance with any commencement or end dates as specified in the Purchase Order;
- 18.1.4 any claim made against us arising out of or in connection with the provision of the Goods and/or Services, to the extent that such claim arises out of the breach,



negligent performance or failure or delay in performance of the Contract by you or your Personnel;

18.1.5 any liability, loss, damages, injury, costs, claims or expenses (including legal expenses) suffered or incurred by us in connection with the WEEE Regulations 2004 and the ROHS Regulations 2004; and

18.1.6 the enforcement of the Contract.

## 19. INSURANCE

19.1 You shall at your own cost effect and maintain appropriate insurance cover with a reputable insurance company against all liabilities and indemnities that may arise under the Contract.

19.2 You shall give us, on request, copies of all insurance policies or a broker's verification of insurance to demonstrate that the appropriate insurance cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

19.3 The terms of any insurance or the amount of cover shall not relieve you of any liabilities under the Contract.

19.4 You shall hold and maintain the appropriate insurance cover for a minimum of six years following the expiration or earlier termination of the Contract.

## 20. INTELLECTUAL PROPERTY

20.1 In the absence of prior written agreement by the University to the contrary, all the present and future Intellectual Property Rights created by you or your Personnel:-

20.1.1 in the course of performing the Services and any other materials created by you or your Personnel pursuant to the Contract; or

20.1.2 exclusively for the purpose of performing the Services,

shall vest in the University on creation (the "**Project Specific IPR**").

20.2 We hereby grant you a royalty-free, nonexclusive, non-transferable licence for the duration of the Contract to use the Project Specific IPR solely to the extent necessary for providing the Services in accordance with the Contract.

20.3 You shall promptly at our request and at your own expense do and execute, or ensure the doing or execution of, all matters, acts, documents, and deeds as we may at any time require to formalise the vesting of the Project Specific IPR in the University.

20.4 Each party and/or their third party licensors shall retain ownership of their respective Background IPR.

20.5 You shall indemnify us against all costs, expenses (including professional costs and disbursements), losses and damages arising from or incurred by us as a

result of any action, demand or claim that the provision of the Services and/or use of the Goods infringes the Intellectual Property Rights of any third party.]

## 21. DATA PROTECTION

Each party agrees to comply with its obligations as set out in Schedule 1 (Data Protection) of these Conditions.

## 22. TUPE

22.1 The parties agree that the TUPE Regulations shall not apply to the Contract.

22.2 In the event the TUPE Regulations do apply to the Contract, you shall be responsible for and shall indemnify and keep us indemnified in full against any liabilities we incur which arise out of or in connection with:

22.2.1 any failure to comply with your obligations under the TUPE Regulations;

22.2.2 any claim against us by any employee under regulation 4(9) or 4(11) of the TUPE Regulations;

22.2.3 all remuneration, benefits, entitlements, outgoings and damages, penalties, awards, legal costs, expenses and any other liabilities in respect of the employees including all wages, holiday pay, bonuses, commission, PAYE, national insurance contributions, pension contributions and otherwise, from and including the Services commencement date; and

22.2.4 any Personnel engaged in the provision of the Services at any time up to and including the date of termination of the Contract.

## 23. CONFIDENTIAL INFORMATION

23.1 Each party undertakes that it shall keep any information that is confidential in nature concerning the other party including any details of its business, affairs, customers, clients, suppliers, plans or strategy ("**Confidential Information**") confidential and that it shall not use or disclose the other party's Confidential Information to any person, except as permitted by clause 23.2.

23.2 A party may:

23.2.1 disclose any Confidential Information to any of its employees, officers, representatives or advisers ("**Representatives**") who need to know the relevant Confidential Information for the purposes of the performance of any obligations under the Contract, provided that such party must ensure that each of its Representatives to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with this clause 23 as if it were a party;

23.2.2 disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory

authority or any other authority of competent jurisdiction to be disclosed; and

23.2.3 use Confidential Information only to perform any obligations under the Contract.

23.3 Each party recognises that any breach or threatened breach of this clause 23 may cause irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the parties agree that the non-defaulting party may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

23.4 This clause 23 shall bind the parties for the duration of the Contract and for a period of two years following termination of the Contract.

## 24. DISPUTE RESOLUTION

24.1 If any dispute arises between the parties out of or in connection with the Contract, the matter shall be referred to senior representatives of each party who shall use their reasonable endeavours to resolve it.

24.2 If the dispute is not resolved within 14 days of the referral being made under clause 24.1, the parties shall resolve the matter through mediation in accordance with the London Court of International Arbitration Mediation Rules.

24.3 Either party may issue formal legal proceedings at any time whether or not the steps referred to in clauses 24.1 and 24.2 have been completed.

## 25. ASSIGNMENT AND SUB-CONTRACTING

25.1 Our Purchase Order is personal to you and you shall not assign or transfer or purport to assign or transfer to any other person any of your rights or sub-contract any of your obligations under the Contract without our prior written consent (not to be unreasonably withheld). This restriction shall not apply to sub-contracts for materials for minor details or for any part of which the makers are named in the Contract.

25.2 In the event that you enter into any sub-contract in connection with the Contract you shall remain responsible to the University for the performance of your obligations under the Contract notwithstanding the appointment of any sub-Contractor and be liable for the acts and omissions of your sub-contractors.

25.3 In the event that your business is transferred in whole or in part to another person or organisation, you shall retain producer responsibility under the WEEE Regulations 2004, unless the transferee has agreed to meet the producer's obligations in respect of any Goods (i.e. electronic or electrical equipment) under the WEEE Regulations 2004.

## 26. FORCE MAJEURE

Neither party shall have any liability for any failure or delay in performance of the Contract to the extent the same results from a Force Majeure Event. The party affected by such Force Majeure Event shall promptly notify the other party in writing when

such Force Majeure causes a delay or failure in performance and when it ceases to do so. If such Force Majeure Event continues for a continuous period of more than three months, the party not affected may terminate the Contract by written notice to the other party.

## 27. PREVENTION OF BRIBERY, ANTI-FACILITATION OF TAX EVASION AND MODERN SLAVERY

27.1 You shall comply with applicable Bribery Laws including ensuring that you have in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:

27.1.1 all of your Personnel;

27.1.2 all others associated with you; and

27.1.3 all of your subcontractors;

involved in performing the Contract so comply.

27.2 Without limitation to clause 27.1, you shall not make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on your behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on your behalf.

27.3 You shall:

27.3.1 not engage in any activity, practice or conduct which would constitute either:

(a) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or

(b) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;

27.3.2 have and shall maintain in place such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation your Personnel) and to ensure compliance with clause 27.3.1; and

27.3.3 notify us in writing if you become aware of any breach of clause 27.3.1 or have reason to believe that you or any person associated with you has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Contract.

27.4 You will comply with the Modern Slavery Act 2015, Modern Slavery Statement and all associated regulations. You agree not to engage in any practice or conduct which would constitute an offence under the Modern Slavery Act 2015.

27.5 Any breach of this clause 27 shall be deemed a material breach of the Contract that is not remediable and shall

entitle us to immediately terminate the Contract by notice under clause 14.

## 28. FREEDOM OF INFORMATION

28.1 You acknowledge that, in order to be compliant with the FOIA and the EIR, we may be obliged, on request, to provide or consider the provision of Information to third parties where that Information constitutes or may constitute Confidential Information. Subject to the provisions of this clause 28, you shall assist and cooperate with us (at your expense) to facilitate our compliance with the FOIA and/or EIR in that regard.

28.2 Without prejudice to the generality of its obligations under clause 28.1, you shall:

28.2.1 transfer any request for Information, as defined by the FOIA, that you receive, to us as soon as practicable after receipt and in any event within two (2) Working Days of receiving that Request for Information; and

28.2.2 provide us with a copy of all Information in your possession or power that we reasonably consider is relevant to the Request in the form that we require as soon as practicable and in any event within five (5) Working Days of us requesting that Information (and any follow-up Information required by us thereafter within two (2) Working Days of our follow-up request).

28.3 You further acknowledge that, notwithstanding the provisions of clause 28.1, we may, acting in accordance with the FOIA Code, be obliged under the FOIA or the EIR to disclose Information that is or may be Confidential Information:

28.3.1 in certain circumstances without consulting with you;

28.3.2 following consultation with you and having taken your views into account; or

28.3.3 provided always that where clause 28.3.1 applies, we shall, in accordance with the recommendations of the FOIA Code, draw this to your attention prior to any disclosure.

28.4 Subject to us complying with our obligations under this clause 28, we shall not be liable for any loss, damage, harm or other detriment suffered by you arising from the disclosure of any Information, whether or not such Information is Confidential Information, falling within the scope of the FOIA or EIR.

28.5 You shall indemnify us against all claims, demands, actions, costs, proceedings and liabilities that we incur due to your breach of this clause 28.

28.6 For the purposes of this clause 28 only "Working Day" has the meaning given in section 10 of the FOIA.

## 29. PREVENT

You acknowledge that we are subject to the requirements of Prevent and you (acting reasonably)

will assist and cooperate, wherever possible, with us to enable the University to comply with its obligations under Prevent.

## 30. LIENS AND CLAIMS

You shall indemnify and hold us harmless from all liens and other encumbrances against the Goods or any property belonging to us or in our possession on account of debts or claims alleged to be due from you or your sub-contractors to any person, including sub-contractors, and on our behalf and in the University's name, as the case may be, shall defend at your own expense any claim or litigation in connection therewith and shall follow our reasonable instructions in connection therewith.

## 31. NOTICES

All notices and communications required to be sent to you by us in the Contract shall be made in writing and sent by either first class mail to your registered or head office address or by email to your representative and if sent by you to us sent by email to [procurement@cardiff.ac.uk](mailto:procurement@cardiff.ac.uk). Provided the relevant communication is not returned as undelivered, it shall be deemed to have reached the party to whom it is addressed on the next business day following the date of transmission or posting.

## 32. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 33. SEVERABILITY

33.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

33.2 If one party gives notice to the other of the possibility that any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 34. THIRD PARTY RIGHTS

34.1 Unless it expressly states otherwise, the Contract does not give any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

34.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.

35. **VARIATION**

No addition, alteration or substitution of these Conditions or a Purchase Order will bind us or form part of the Contract unless and unless agreed in writing by the parties.

36. **ENTIRE AGREEMENT**

This Contract and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

37. **GOVERNING LAW AND JURISDICTION**

37.1 This 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 and Wales.

37.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

**SCHEDULE 1**

**DATA PROTECTION**

1. **DEFINITIONS**

In this Schedule 1 the following definitions shall apply:

<b>"Controller" and "Processor"</b>	shall have the meaning given to those terms in the applicable Data Protection Laws;
<b>"Data Protection Laws"</b>	means (a) any Applicable Law which applies to each party in any territory in which they Process Personal Data and which relates to the protection of individuals with regards to the Processing of Personal Data and privacy rights, including without limitation the GDPR and the e-Privacy Directive and relevant member state laws in the European Economic Area (" <b>EEA</b> ") and in relation to the United Kingdom (" <b>UK</b> ") the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (amended by SI 2011 no. 6) and the GDPR (as incorporated into UK law under the UK European Union (Withdrawal) Act 2018) as the same are amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) as amended to be referred to as <b>PECR</b> , <b>DPA 2018</b> and the <b>UK GDPR</b> respectively; (b) any binding code of practice or guidance published by a Regulator from time to time; and/or; (c) any binding pronouncements (including findings, orders, decisions and/or judgements) issued by a Regulator or a court;
<b>"GDPR"</b>	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;
<b>"Personal Data"</b>	means any personal data (as defined in the Data Protection Laws) Processed by either party in connection with the Contract;
<b>"Processing"</b>	has the meaning set out in the Data Protection Laws (and " <b>Process</b> " and " <b>Processed</b> " shall be construed accordingly); and
<b>"Regulator"</b>	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering, providing guidance on, supervising and enforcing Data Protection Law, including without

limitation (where applicable) in the UK, the Information Commissioner's Office, or any successor or replacement body from time to time.

## **2. DATA PROTECTION**

### **2.1 Contact Details**

2.2 The parties each acknowledge and agree that they may need to Process Personal Data relating to each party's representatives (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Goods and/or Services; (b) request and receive the Goods and/or Services; (c) compile, dispatch and manage the payment of invoices relating to the Goods and/or Services; (d) manage the Contract and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Goods and/or Services; and (f) comply with their respective regulatory obligations.

2.3 Each party shall Process such Personal Data relating to each party's representatives for the purposes set out in paragraph 2.2 in accordance with their respective privacy policies. The parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in paragraph 2.2, and in doing so each party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Laws.

### **2.4 Data Processor Obligations**

Given the nature of the Contract and the provision of the Goods and/or Services, the parties do not envisage that either party will Process any Personal Data for or on behalf of the other party, under or in connection with the Contract or the provision of the Goods and/or Services. Where and to the extent that in undertaking the obligations set out in the Contract or providing the Goods and/or Services, either party anticipates that the other will Process any Personal Data for and on behalf of the other party it shall notify the other party and the parties shall agree a variation to the Contract to incorporate appropriate provisions in accordance with Article 28 of the GDPR, or as otherwise required by the Data Protection Laws.