

General Terms and Conditions of Purchase (“the Terms”)

PART A – PRELIMINARY

1 Definitions and Interpretation

1.1 In these terms and conditions:

‘Anti-slavery Policy’ means the University of Warwick Policy on the Modern Slavery Act 2015 (or any statutory replacement), as updated from time to time and available from

https://warwick.ac.uk/services/finance/corporate_information/

‘Authorised’ means signed by one of Our Authorised Officers;

‘Authorised Officer’ means any of Our employees, who is authorised either generally or specifically by Us to sign Our Purchase Orders, and confirmation of whose identity may be obtained from the Head of Procurement and Insurance, or such other person as We may nominate from time to time;

‘Bribery Act 2010’ means the Bribery Act 2010 or any statutory replacement;

Code of Conduct means the “University Health and Safety Code of Conduct for Contractors Working on behalf of the University” as updated from time to time and available from <http://www2.warwick.ac.uk/services/healthsafetywellbeing/guidance/contractors>

Construction Work means works as defined by the Construction (Design & Management) Regulations 2015 as updated from time to time;

‘Contract’ means the agreement made between You and Us, as evidenced by the Purchase Order, these Conditions, and any specifications, plans, patterns, samples, drawings, any and all Schedules and/or other documents (whether provided by You or otherwise) as are expressly referred to therein or are incorporated therein by express agreement between the Parties. In the event of conflict between the Terms and any terms contained within the Schedules to the Terms, the terms of the Schedule shall apply. Your Conditions of Sale do not form part of the Contract;

‘Delivery’ shall mean the delivery (including off loading, setting in the designated place and installation) of the Goods to the Premises and/or the provision of the Services; and **‘Deliver’** shall be interpreted accordingly. **‘Delivery’** shall not under any circumstances imply acceptance of the Goods and/or Services;

'Employment Taxes' means PAYE, national insurance contributions, (including employers contributions if applicable), apprenticeship levy and any other employment related taxes or levies

'Goods' means the goods, materials, articles, works and/or Services (including any instalment of the goods or any part of them) described in the Contract;

'Key Personnel' has the meaning set out in Condition 6.3;

'Order Amendment' means a written notification issued to You by Us to amend, add to, detract from or modify the Purchase Order. This may also be in the form of an electronic Purchase Order Revision;

'Packaging' means any type of package including bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers;

'Personnel' shall mean all personnel employed or engaged by You (and including the personnel of any agent or sub-contractor) for the purpose of performing the Contract;

'Premises' means the location or locations where the Goods are to be delivered or the Services are to be performed, as specified in the Purchase Order;

'Price' means the price, exclusive of Value Added Tax and after deduction of all agreed discounts, payable to You by Us under the Contract for the full and proper performance by You of Your obligations under the Contract;

'Purchase Order' means Our Authorised Purchase Order referring to these General Conditions of Purchase;

'Services' means the services (if any) described in the Purchase Order;

'Special Terms' means any additional terms and conditions annexed to these Terms and marked as 'Special Terms'

'We', 'Us' and 'Our' means the University of Warwick; and

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

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Contract;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 1.2.5 the word 'including' shall be understood as meaning 'including without limitation'; and
- 1.2.6 the Special Terms (if any) are incorporated into these Terms and amend these Terms to the extent specified within such Special Terms.

2 The Contract

- 2.1 All Orders shall be in writing via an official Authorised Purchase Order, detailing a University of Warwick Purchase Order Number. Any Purchase Orders that are not issued in accordance with the requirements of this clause shall not constitute a valid offer to You, and the University will not be liable in respect of the same.
- 2.2 You agree to sell and We agree to purchase the Goods and Services subject to the provisions of the Purchase Order (including any documents or part documents referred to therein), and of these Terms and any Order Amendments and Your acceptance thereof by word or conduct. You shall be deemed to have accepted the Purchase Order on the Terms described above by supplying the Goods or performing the Services specified in the Purchase Order
- 2.3 In the event of any conflict the documents listed in clause 2.2 shall take precedence in the following order:
 - 2.3.1 any Order Amendments (and in the case of a series of Order Amendments each Order Amendment shall take precedence over any earlier Order Amendments);
 - 2.3.2 the Purchase Order;
 - 2.3.3 these Terms;
 - 2.3.4 any other document (or part document) referred to in the Purchase Order.
- 2.4 These Terms shall apply to the Contract to the exclusion of all other terms and conditions on which any quotation has been given to Us, or which are referred to by You in any document, or subject to which the Purchase Order is accepted or purported to be accepted by You.
- 2.5 In the event that Your terms and conditions are subsequently found by a court of competent jurisdiction to have been incorporated the Contract, then in the case of any conflict these Terms shall prevail.
- 2.6 If the Purchase Order provides that the Goods are purchased on any trade term defined in the current edition of Incoterms the use of the same shall import the obligations there provided upon Us and You respectively as buyer and seller.

3 Seller To Inform Itself Fully

- 3.1 You shall be deemed to have examined any and all requirements documents including but not limited to any drawings, descriptions, specification, performance brief, as may be issued by Us to You prior to issue of a Purchase Order. You will not make any claim for additional payment on the grounds of misinterpretation of such documents (whether prepared by You or Us) or these Terms.
- 3.2 You shall be deemed to have understood the nature and extent of the Goods to be supplied and / or Services to be performed under the Contract and to have inspected the Premises and We shall not be under any liability in the event that You have failed to do so.

4 Order Amendments

- 4.1 We may, at any time prior to Delivery, send You an Order Amendment.
- 4.2 If the Order Amendment will cause a change to the Price or Delivery date then You must suspend performance of the Contract and notify Us of the new proposed Price or proposed Delivery date as soon as is reasonably practicable. The new proposed Price or proposed Delivery date shall be based on the same level of cost and profitability as the original Price.
- 4.3 We shall have a minimum of ten (10) working days to consider any new proposed Price or proposed Delivery date, and the Order Amendment shall only take effect if and when Our Authorised Officer accepts in writing the new proposed Price or proposed Delivery date within the time period you specify. If Our Authorised Officer fails to confirm the Order Amendment within the time period then performance of the Contract shall immediately resume as though the said Order Amendment had not been issued, provided that We may still exercise our right of cancellation in accordance with clause 28.
- 4.4 No addition alteration or substitution of these conditions will bind Us or form part of the Contract unless and until accepted in writing by Our Authorised Officer.

5 Independent Contractor

- 5.1 You shall not act as Our agent, employee or partner in supplying the Goods or performing the Services and no provision of these Terms shall be deemed to infer an agency, partnership, or employment relationship between the Parties.
- 5.2 Accordingly:
 - 5.2.1 You shall not (and shall procure that Your agents and sub-contractors do not) say or do anything that might lead another person to believe that You are acting as Our agent, employee or partner;
 - 5.2.2 You shall not (and shall procure that Your agents and sub-contractors do not), without Our prior written consent, commit Us to any legally binding agreement, or hold Yourself out as being able to commit Us, and nothing in the Contract shall impose any liability on Us in respect of any liability so incurred by You to any other person and you undertake to indemnify us accordingly

PART B – SUPPLY OF SERVICES AND GOODS

6 Performance of the Services

- 6.1 You shall commence the Services on the date specified in the Purchase Order if applicable, and shall complete such Services by the date stated in the Purchase Order, or alternatively, shall continue to perform such Services for the period or price stated in the Order (whichever is applicable). For the avoidance of doubt, time is of the essence of the Contract.
- 6.2 We may by written notice require You to execute the Services in such Purchase Order as We may decide. In the absence of such notice You shall submit such detailed programmes of work and progress reports as We may from time to time require.
- 6.3 If and when requested by Us, You shall provide Us with a list of names and addresses of all Personnel who are or may be at any time concerned with the provision of the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars, evidence of identity and/or other supporting evidence as We may reasonably require. These Personnel shall be designated “Key Personnel”
- 6.4 You shall ensure that the Key Personnel are made available in the performance of the Services unless we agree otherwise. We shall act reasonably in considering requests for replacement to the Key Personnel where the need for the replacement has arisen due to circumstances beyond Your control. Prior to any agreement by Us, We reserve the right to assess any proposed replacement personnel and consider any impact upon Service delivery. Should We refuse consent You will propose a further alternative without delay.
- 6.5 You shall not deliver any materials, plant, equipment or other items, nor commence any work on the Premises without obtaining Our prior consent.
- 6.6 You shall have such access to the Premises as You shall reasonably require in order to carry out the Services (whether or not any other works are being carried out at the Premises at the same time). You shall have no right of exclusive access to the Premises and You shall co-operate with such other persons requiring access to the Premises, as We shall reasonably require.
- 6.7 We shall have the power at any time during the progress of the Services to order in writing:
 - 6.7.1 the removal from the Premises of any materials which in the opinion of the University are either hazardous, noxious or not in accordance with the Contract; and/or
 - 6.7.2 the substitution of proper and suitable materials; and/or
 - 6.7.3 the removal and proper re-execution of any work, notwithstanding any previous test and/or inspection thereof or interim payment, which, in respect of materials and/or workmanship, is not in the University’s reasonable opinion in accordance with the Contract.
- 6.8 On completion of the Services You shall remove Your plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.
- 6.9 You shall provide the Services promptly and in accordance with any times specified in the Contract. Time of performance is of the essence of the Contract.
- 6.10 The Services shall be provided using:

- 6.10.1 due skill and care to the highest industry standards; and
- 6.10.2 skilled Personnel who are properly trained and supervised.
- 6.11 You shall provide Us with an advice note in respect of each complete performance of the Services and / or any separable part thereof, such as We may from time to time require. All advice notes, and any other relevant correspondence with Us shall be clearly marked with Our Purchase Order number, the consignee and the description of the Services concerned.
- 6.12 The commencement of Services under this Contract shall not be deemed to constitute a “relevant transfer” for the purposes of the Transfer of Undertakings (Protection of Employment Regulations) 2006 (“TUPE”).
- 6.13 In the event that We and You anticipate that the termination or expiry of the Contract and the provision of services similar to the Services by Us or a replacement service transfer may constitute a “relevant transfer” for the purposes of TUPE you shall:
 - 6.13.1 six (6) months prior to the expiry date;
 - 6.13.2 within twenty eight (28) days of notice to terminate; or
 - 6.13.3 within twenty eight (28) days of notice to Our request;

provide us the “employee liability information” under TUPE and any other relevant information as We may reasonably require.

- 6.14 You shall indemnify Us and any replacement service provider and keep Us and any replacement service provider fully and effectively indemnified against:
 - 6.15 any losses, damages, penalties, orders, awards, reasonable costs (including legal costs), expenses or other payments incurred as a result of any claim by any of the transferring Personnel against Us and any replacement service provider arising out of any act, fault or omission (including any breach of Regulation 13 of TUPE and in relation to the contract of employment and any collective agreement concerning the transferring Personnel) of their employer which occurred prior to any such transfer; and
 - 6.16 any redundancy payments, any enhanced redundancy payments and any (“Redundancy Costs”) to which to each or any of the employees who so transfers is entitled under their employment contracts, incurred by Us or any replacement service provider in dismissing any of them by reason of redundancy (as defined by the Employment Rights Act 1996) where the effective date of termination falls within six months of the date of the relevant transfer, provided always that We shall take all reasonable steps to mitigate the amount of the Redundancy Costs payable by You.

7 Delivery

- 7.1 Goods shall be delivered at the time stated in the Purchase Order. Where the time of Delivery is not specified on the Purchase Order, then it shall be deemed to be a reasonable time from the date of the Purchase Order. For the avoidance of doubt time is of the essence of the Contract
- 7.2 You shall, at Your own expense, ensure that the Goods are properly packed, secured and dispatched in order that they are Delivered to Us in good condition and free from any damage.
- 7.3 The Goods shall be delivered to the address stated by Us in the Contract on the date or within the period stated in the Contract, in either case during usual business hours.

- 7.4 If the Goods or any part of them are not delivered by the time or times specified in the Contract then We may by written notice cancel any undelivered balance of the Goods. We may also return for full credit and at Your expense any Goods that in Our opinion cannot be utilised as a result of the cancellation.
- 7.5 In the case of Services, We are entitled to make alternative arrangements for the Services to be performed and You shall reimburse any additional costs reasonably incurred by Us in respect of this. This clause is without prejudice to any other rights that We have under the Contract.
- 7.6 Where You fail to deliver any Goods at the correct time or place, We shall be entitled to deduct from the Price of the Goods in question any costs incurred in respect of storage or transport of such Goods.
- 7.7 We shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until We have had a reasonable time to inspect them following Delivery or performance or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 7.8 Acceptance - Without prejudice to clauses 28 and 29:
- 7.8.1 We shall have the right to reject the Goods and / or Services in whole or in part whether or not paid for in full or in part within a reasonable time of Delivery / performance (and commissioning if appropriate) if they do not conform with the requirements of this Contract;
- 7.8.2 At our sole discretion We may give You a reasonable opportunity to replace the Goods with new Goods that conform with the Contract, or re-perform the Services after which time We shall be entitled to cancel the Purchase Order and purchase the nearest equivalent goods or services elsewhere;
- 7.9 In the event of cancellation under this clause You shall promptly repay any moneys paid under the Contract without any retention or offset whatsoever. Cancellation of the Purchase Order under this clause shall not affect any other rights We may have. You must collect all rejected Goods within a reasonable time of rejection or We shall return them to You at Your risk and expense.

8 Return of Packaging

- 8.1 Unless otherwise stated in the Contract, all Packaging are non-returnable.
- 8.2 If the Contract states that the Packaging is returnable You must provide full and clear instructions for its return prior to Delivery of the Packaging in question. The Packaging must be clearly marked to show to whom it belongs and You shall bear the cost of all carriage and handling in respect of the return of the Packaging.
- 8.3 We shall not be liable for any Packaging lost or damaged during transit.

9 Excess

- 9.1 Any Goods supplied in excess of orders are subject to rejection and, in such an event, will be returned at Your risk and expense.

10 Risk and Property

- 10.1 Without prejudice to any other or Our rights or remedies, unless otherwise expressly agreed risk in the Goods shall only pass to Us when Delivery of the Goods is complete (including off-loading, stacking and installation). For the avoidance of doubt, any reference by Us on the Purchase Order to Incoterms® is for the purposes of clarity in respect of the nominated importer of record and associated import obligations, as may be applicable, only and does not alter the passing of risk as detailed within this clause and Clause 10.4 below.
- 10.2 Ownership of the Goods shall pass to Us:
- 10.2.1 when the Goods have been delivered but without prejudice to Our right of rejection under this Contract, or
- 10.2.2 if We make any advance or stage payment, at the time such payment is made, in which case You shall mark the Goods as Our property and shall ensure that the Goods are at all times clearly identifiable as belonging to Us.
- 10.3 You warrant that:
- 10.3.1 You have full clear and unencumbered title to all the Goods;
- 10.3.2 at the date of Delivery of any of the Goods You shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to Us. On Delivery We shall acquire a valid and unencumbered title to the Goods.
- 10.4 You shall bear all risks of loss or damage to the Goods until such time as the Goods are delivered to Us in accordance with the Contract. You shall insure the Goods accordingly.

PART C – PRICE AND PAYMENT

11 Price

- 11.1 The Price of the Goods and or Services shall be fixed and as stated in the Contract and, unless otherwise so stated, shall be:
- 11.1.1 exclusive of any applicable value added tax which shall be payable by Us (subject to receipt of a VAT invoice) at the rate prevailing at the relevant point; and
- 11.1.2 inclusive of all charges for storage, packaging, shipping, carriage, insurance, unloading, installation and commissioning (where appropriate), duties, imports or other levies (other than Value Added Tax) and any other charges associated with the Delivery of the Goods to the address for Delivery as shown on the Purchase Order.
- 11.2 Subject to clause 4, no increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without Our prior written consent.
- 11.3 You are responsible for making appropriate deductions and payment of all Employment Taxes payable in respect of all of Your activities and those of Your Personnel
- 11.4 To the extent that We, at our sole discretion, consider that We are required to do so by law, We shall make appropriate deductions and payment of Employment Taxes in respect of the provision by You of the Services and comply with any associated reporting obligations to HM Government. The Price of the Goods and / or Services will be reduced accordingly.

12 Invoicing and Payment

- 12.1 You shall invoice Us as specified in the Purchase Order. Each invoice shall be rendered on Your standard form invoice and include such supporting information required by Us to verify the accuracy of the invoice, including the relevant Purchase Order number and a breakdown of the Goods and / or Services supplied in the invoice period.
- 12.2 You shall ensure that all invoices are addressed to the department indicated on the Purchase Order and contain the full Purchase Order number.
- 12.3 Payment will be made in pounds sterling within thirty (30) days of Our receipt of a correctly rendered invoice, subject to acceptance of the goods and / or in Our reasonable opinion, satisfactory performance of the Services
- 12.4 If You fail to include any of the information specified in clause 12.1 and 12.2, this may result in a delay in the payment of the invoice and We shall accept no liability in respect of such late payment.
- 12.5 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. We shall, following the receipt of a valid VAT invoice, pay to You a sum equal to the VAT chargeable in respect of the Goods.
- 12.6 Save for Clause 12.4, if a payment of an undisputed amount is not made by Us by the due date, then We shall pay You interest at 1% above the base rate of Barclays Bank Plc at the time on the undisputed amount. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount. This clause shall not apply to payments that the We dispute in good faith.
- 12.7 Set Off - We shall be entitled to set off against the Price any sums owed to Us by You, whether under this Contract or any other Contract.

13 Procedures

- 13.1 The Purchase Order number must be quoted on all relevant correspondence, advice notes and invoices. Goods must not be delivered pursuant to verbal instructions.
- 13.2 All packages of Goods must be numbered and the numbers shown on the relevant invoices and the delivery notes.

PART D – UNIVERSITY RIGHTS

14 Articles on Loan and Use of Information

- 14.1 All tools, materials, drawings, specifications, documentation and other equipment and data (the “**Articles**”) loaned by Us to You in connection with the Contract shall remain always Our property and be surrendered to Us upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by You solely for the purpose of completing the Contract.
- 14.2 You shall ensure that the Articles are maintained in good order and condition, are not lost or damaged and are at all times clearly identifiable as belonging to Us. You shall use such Articles solely in connection with Your performance of the Contract.
- 14.3 You agree that no copy of any of the Articles will be made without the consent in writing of Our Authorised Officer.
- 14.4 Risk in such Articles shall pass to You upon Delivery of the same to You or collection by You and shall remain with You until the same are returned to the Premises or collected by Us as the case may be. You shall indemnify Us in full against any loss and/or damage of such Articles and shall insure the same at Your own expense against the risk of loss, theft or damage.

- 14.5 All scrap or surplus arising from the supply of such Articles must be disposed of at Our discretion and all proceeds of sales of such surplus or scrap must promptly be paid to Us in full.
- 14.6 In the event that You fail to return such Articles We are hereby irrevocably authorised, without any requirements as to notice, to enter upon Your premises for the purpose only of recovering the said Articles.

15 Work on Our Premises

- 15.1 Where You require access to the Premises for the purposes of installation of the Goods and / or Performance of the Services We shall provide reasonable access and all services necessary to permit You to fulfil Your obligations under the Contract at mutually convenient times.
- 15.2 Your Personnel authorised by Us to access our site must carry appropriate identification at all times.
- 15.3 You will commit no act or omission (and shall procure that Your employees, agents, sub-contractors or other representatives do not commit such act or omission) at the Premises which would render Us liable to any person and You shall observe all regulations and provisions in force relating to the safety of persons using the Premises.
- 15.4 You will at all times (and shall ensure that Your employees, agents subcontractors or other representatives) comply with Our reasonable instructions whilst on Our Premises.
- 15.5 You shall take any steps reasonably required by Us to prevent unauthorised persons being admitted to the Premises. If We give You notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Services, You shall take all reasonable steps to comply with such notice as soon as is reasonably practicable.
- 15.6 Where required by Us, You shall replace any person removed under this clause with another suitably qualified person as soon as is reasonably practicable, and procure that any access security pass issued to the person removed is surrendered to Us immediately
- 15.7 Any decision of Ours in respect of this clause 15 (including Your actions or omissions of in respect of such clauses) shall be final.
- 15.8 You shall bear the cost of any notice, instruction or decision of Ours under this clause.

16 Free Issue Materials

- 16.1 Where We, for the purposes of the Contract issue materials free of charge to You, such materials shall be and shall at all times remain Our property.
- 16.2 You shall ensure that all such materials are maintained in good order and condition, are not lost or damaged and are at all times clearly identifiable as belonging to Us.
- 16.3 You shall notify Us of any surplus materials remaining after completion of use and shall dispose of them as We may direct. Waste of such materials from bad workmanship or negligence of You or your agents or sub-contractors shall be made good at Your expense. Without prejudice to any other of Our rights, You shall deliver up such materials whether processed or not, to the Us on demand.

17 Progress and Inspection

- 17.1 You shall at Your expense provide any programmes of manufacture and Delivery and / or schedule of Service performance that We may reasonably require from time to time. You shall notify Us as soon as is reasonably practicable when You become aware that progress falls behind or may fall behind any of these programmes.
- 17.2 We shall have the right to check Your the progress (or the progress of Your sub-contractors as the case may be) at all reasonable times.
- 17.3 All Goods shall be subject to such tests as are specified in Our Purchase Order, and We shall be entitled to be present at the carrying out of all such tests.
- 17.4 We shall be entitled to inspect the Goods at any reasonable time, but such inspection shall not constitute acceptance or approval of the Goods. If upon inspection any Goods are defective or are not in accordance with the Contract, We shall inform You in writing that the Goods are rejected and You shall at Your own expense make good the defect and/or ensure the Goods comply in all respects with the Contract.
- 17.5 You shall ensure that any sub-contracts that You enter reserve the rights detailed in clauses 17.2 and 17.3 to Us.

18 Audit

- 18.1 You shall keep and maintain until six (6) years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:
- 18.2 the Goods and / or Services provided under it;
- 18.3 all expenditure reimbursed by Us;
- 18.4 all payments made by Us;
- 18.5 You shall on request afford Us or Our representatives such access to those records as may be required in connection with this Contract.

PART E – WARRANTIES AND LIABILITIES

19 Warranties

- 19.1 You warrant to Us that the Goods:
- 19.1.1 will be of highest quality and fit for their normal purpose and any other purpose held out by or known to You at the time the Purchase Order is placed, and in this respect We rely upon Your skill and judgment;
- 19.1.2 will be free from defects in design, material and workmanship;
- 19.1.3 will correspond with any relevant specification, quantities, standards of performance, stipulations or samples provided in the Contract;
- 19.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods; and
- 19.1.5 shall not contain any asbestos or asbestos based products.
- 19.2 You warrant to Us that the Services:

- 19.2.1 will be performed by appropriately qualified and trained Personnel, with due care and diligence; and
- 19.2.2 will be provided to such high standard of quality as it is reasonable for Us to expect in all the circumstances.
- 19.3 Without prejudice to any other remedy, if any Goods and/or Services are not supplied or performed in accordance with the Contract, or if any defect shall materialise within a period of the first twelve (12) months of actual use following Delivery and/or performance, or alternatively eighteen (18) months from the date of acceptance and/or performance (whichever shall expire first), then We shall be entitled at Our option:
 - 19.3.1 to require You to repair the Goods and/or to supply replacement Goods or Services in accordance with the Contract within the time stated in writing by Us and such replacement Goods or Services shall also be subject to the warranties in sub-conditions 1 and 2 for a period of twelve (12) months following Our acceptance; or
 - 19.3.2 to treat the Contract as discharged by Your breach (which includes any failure of the Goods and/or Services to meet the Contract requirements following repair and/or replacement) and require the repayment of any part of the Price which has been paid.
- 19.4 You warrant to Us that You shall ensure that compatible spare parts are available to facilitate repairs (where applicable) for a period of at least ten (10) years from the date of Delivery of the Goods.
- 19.5 For the purposes of clause 19.3 such defect may arise from Your faulty design, erroneous instructions as to use, inadequate or faulty materials, poor workmanship or any other breach of Your obligations under the Contract or otherwise at law.
- 19.6 In addition to Your obligation pursuant to clause 19.3 You shall indemnify Us in full against all liability, loss including loss of profit and increased production costs, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by Us as a result of or in connection with:
 - 19.6.1 breach of any warranty given by You in relation to the Goods and/or the Services;
 - 19.6.2 any claim that the Goods and or Services infringe, or their importation, use of resale, infringes the patent, copyright, database right, registered design, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specification or drawing supplied by Us;
 - 19.6.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
 - 19.6.4 any act or omission of You, Your employees, agents or sub- contractors in supplying, delivering and/or installing the Goods; and
 - 19.6.5 any act or omission of You, Your employees agents or sub- contractors in connection with the performance of the Services
 - 19.6.6 You represent, warrant and undertake that You conduct Your business in a manner that is consistent with the Anti-Slavery Policy and the requirements as set out in Schedule 1 University of Warwick Supply Chain Requirements in Respect of Modern Slavery

20 Indemnities

- 20.1 You agree to indemnify Us against all actions, claims, proceedings, liabilities costs, expenses, loss or damage of whatsoever kind (including legal fees) sustained by Us, in respect of or arising out of any breach of the warranties and / or any breach of the obligations under the Contract

21 Insurance

- 21.1 You shall hold satisfactory insurance cover with a reputable insurer to meet Your full liabilities and indemnities under this Contract, for the duration of the Contract and any associated limitation periods and shall procure that any of Your subcontractors shall likewise insure the same.
- 21.2 Notwithstanding Clause 20.1, the University requires You to hold as a minimum, the following insurance cover:
- 21.2.1 Public Liability insurance cover of at least £5,000,000 (Five Million pounds Sterling) in respect of any one claim and unlimited liability in the aggregate over a period of insurance
 - 21.2.2 Products Liability insurance cover of at least £5,000,000 (Five million pounds Sterling) in respect of any one claim; to the extent that the Contract relates to the supply of Goods
 - 21.2.3 Professional Indemnity insurance cover of at least £5,000,000 (Five million pounds Sterling) in respect of any one claim, to the extent that the Contract relates to the provision of Services
 - 21.2.4 Employers Liability insurance cover of at least £5,000,000 (Five Million pounds Sterling, in respect of any one claim, should You employ one (1) or more persons
- 21.3 You shall effect insurance with a reputable insurer against all those risks arising from Your indemnity in clause 19.6.
- 21.4 shall provide Us, and shall ensure Your Subcontractors provide us, with satisfactory evidence of such insurance and payment of current premiums upon request.

PART F – INTELLECTUAL PROPERTY AND INFORMATION

22 Intellectual Property

- 22.1 It shall be a condition of the Contract that the Goods and Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party, except to the extent that such infringement is attributable to Your use, in the course of performing the Services, of any designs, documents or other materials provided to You by Us. You shall indemnify Us against all actions, claims, demands, costs and expenses which the We may suffer or incur as a result of or in connection with any breach of this clause. You shall have the right to defend any such claim and shall do so at Your own cost provided that You do so to Our reasonable satisfaction. If You fail to respond or defend a claim to Our reasonable satisfaction then We reserve the right to do so at Your cost.
- 22.2 All intellectual property rights (including but not limited to ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, designs or other materials that are:

- 22.2.1 provided to or made available to You by Us, belong to the University and are vested in the University absolutely;
- 22.2.2 prepared by or for You for use, or intended use, in relation to the performance of the Contract are hereby assigned to and shall vest in Us absolutely, and You shall not and shall procure that Your sub-contractors and agents shall not (except to the extent necessary for the implementation of the Contract) without Our prior written consent use or disclose any such specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to the Contract) which You may obtain pursuant to or by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this provision.
- 22.3 In particular (but without prejudice to the generality of the foregoing) You shall not refer to Us or the Contract nor use Our logo or other identifier in any advertisement or other public announcement without Our prior written consent.
- 22.4 You shall not infringe any copyright, patent, trade mark, trade name or registered design vested in the University.
- 22.5 If the Contract involves design and/or development work:
 - 22.5.1 All intellectual property rights in the results of work arising out of or deriving from this Contract, including inventions, designs, copyright and knowledge shall be Our property and We shall have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought.
 - 22.5.2 You shall promptly communicate to Us all such results and shall if requested and at Our expense do all acts and things necessary to enable Us or Our nominee to obtain letters patent, registered designs and other protection for such results in all territories and to assign the same to Us or Our nominee.
 - 22.5.3 You shall ensure that all technical information (including computer programs and programming information) arising out of or deriving from this Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of this Contract.
- 22.6 The provisions of this clause 22 shall apply during the continuance of the Contract and after its termination howsoever arising.

23 Data Protection

- 23.1 Where you are processing Personal Data as a Data Processor for us, You agree to comply with Your obligations as set out in Schedule 3 of this Contract.

24 Force Majeure

- 24.1 Neither party shall be liable to the other for any failure to perform its obligations under the Contract where such performance is rendered impossible by circumstances beyond its control, but nothing in this clause shall limit Your obligations to use Your best endeavours to fulfil Your obligations under the Contract.

25 Confidentiality

- 25.1 You shall keep and procure to be kept secret and confidential any information belonging to Us disclosed as a result of the relationship of the parties under the Contract and shall not use such information except of the purpose of performing the Contract, nor disclose the same save with the written consent of Our Authorised Officer. Where such disclosure is made to any employee, consultant, agent or subcontractor, it shall be done subject to obligations equivalent to those set out in this Condition and each party shall be responsible to the other in respect of any disclosure or use of such information by a person to whom disclosure is made.

26 Freedom of Information

- 26.1 You acknowledge that We are subject to the requirements of the Freedom Of Information Act 2000 (“FOIA”) and the Environmental Information Regulations 2004 and shall:
- 26.1.1 provide all necessary assistance and cooperation as reasonably requested by Us
 - 26.1.2 to enable Us to comply with Our obligations under the FOIA and the Environmental Information Regulations 2004;
 - 26.1.3 transfer to Us all requests for information under FOIA and the Environmental Information Regulations 2004 relating to the Contract that You receive as soon as practicable and in any event within two (2) working days of receipt;
 - 26.1.4 provide Us with a copy of all Information belonging to Us requested in the request for information which is in your possession or control in the form that We require within five (5) working days (or such other period as We may reasonably specify) of Our request for such Information; and
 - 26.1.5 not respond directly to a Request for Information unless authorised in writing to do so by Us.
- 26.2 You acknowledge that We may be required under the FOIA and the Environmental Information Regulations 2004 to disclose information concerning You or the Goods / Services (including commercially sensitive information) without consulting You or obtaining Your consent. In these circumstances We shall, in accordance with any relevant guidance issued by the Information Commissioner’s Office, take reasonable steps, where appropriate, to give You advance notice, or failing that, to draw the disclosure to Your attention after any such disclosure
- 26.3 Notwithstanding any other provision in the Contract, We shall be responsible for determining in Our absolute discretion whether any information relating to You or the Goods or Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

PART G – TERMINATION

27 Our Right of Cancellation

27.1 In addition to Our other rights of cancellation under this Contract, We may cancel the Purchase Order and any Order Amendment thereto at any time by sending You a notice of termination. You will comply with any instructions that We may issue with regard to the Goods and / or Services. If You submit a termination claim in respect of any work in progress and/or any part of the Goods supplied or Services performed at the time of the cancellation, We will pay to You the cost of any commitments, liabilities or expenditure which in Our reasonable opinion were a consequence of this Contract at the time of termination. The total of all payments made or due to You under this Contract, including any termination payment, shall not exceed the Price. If You fail to submit a termination claim within three (3) months of the date of Our notice of termination then We shall have no further liability under the Contract. The University shall not be liable for any loss to You, including consequential loss, which arises as a result of the University's cancellation pursuant to this Condition

28 Termination

28.1 The Contract may be terminated at any time with immediate effect on written notice from Us if:

- 28.1.1 You, in Our reasonable opinion, breach any of these Terms of the Contract, either in relation to provision of the Goods or Services or otherwise; or
- 28.1.2 You, being an individual, or, where You are a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance of assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or bankrupt, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or have a receiver appointed under the Mental Health Act 1983, die or by reason of any illness (including mental disorder or infirmity), accident or injury or any other cause whatsoever become unable to comply with Your obligations under the Contract;
- 28.1.3 You have any distraint, execution or other process levied or enforced on any of Your property;
- 28.1.4 You cease, or appear in Our reasonable opinion likely or threaten to cease to trade;
- 28.1.5 being an individual, are subject to a term of imprisonment whether or not suspended;
- 28.1.6 if You being a company shall pass a resolution, or the Court shall make an order, that the company shall be wound up (except for the purpose of amalgamation or reconstruction) or if a receiver, manager, administrator or administrative receiver is appointed (or steps have been take to appoint) over any of Your assets, undertakings or income, or if the Court shall make an administration order, or if circumstances shall arise which entitle the Court or a creditor to appoint an administrative receiver or which entitle the Court to make a winding-up order or administration order or if You shall be the subject of a notice to strike off the register at Companies House;

provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the University.

- 28.2 Without prejudice to clause 10 We shall be entitled (whether or not the Services or any part thereof have been accepted by Us) to avail Ourselves of any of the following remedies at Our sole discretion:
- 28.2.1 rescission of the Contract; or
 - 28.2.2 giving You the opportunity to carry out remedial work in respect of the Services at Your expense in order that the Services comply with the Terms of the Contract; or
 - 28.2.3 refusing to accept any further performance of the Services without any liability to You; or
 - 28.2.4 carrying out at Your expense such work as may be necessary to make the Services comply with the Contract; or
 - 28.2.5 claiming such damages, costs and expenses as We may have sustained in consequence of any breach of the Terms of the Contract or failure by You to comply with any statutory or other legal obligations herein specified or implied by law.

These rights shall be in addition to and without prejudice to any other rights that We may have.

PART H – GENERAL PROVISIONS

29 Legal Requirements

- 29.1 You shall perform the Contract in a manner that conforms with any relevant laws, regulations, directives or other legal requirements or obligations in force from time to time.
- 29.2 Without limitation to clause 29.1 You shall conduct Yourself in accordance with all legal requirements in force from time to time relating to equality of opportunity and discrimination and will also comply with the requirements laid out in Schedule 2 University of Warwick Supply Chain Requirements in Respect of Equal Opportunities.

30 Waste Electrical And Electronic Equipment (“WEEE”)

- 30.1 You agree to recover from Us and recycle all WEEE which may be included in the Goods in accordance with European Union Directive 2002/96/EC but also in respect of any applicable law or regulations which implement the same in England and Wales and you hereby indemnify us against any liability we may incur for failure to recover or recycle such WEEE.

31 Safety

- 31.1 In accordance with the requirements of the Health & Safety at Work Act 1974 and any re-enactment or amendment thereof, or any subordinate regulations made under the Health and Safety at Work Act 1974, any safety precautions required for the handling of the Goods are to be clearly indicated on each consignment.
- 31.2 Hazardous Goods must be marked in accordance with Chemical Labelling and Packaging Regulations 2015 (CLP) and any subsequent amendments thereto. Risk and safety phrases must be in English.
- 31.3 Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. You shall observe the requirements of U.K. and international agreements relating to the packing, labelling and carriage of hazardous goods.

- 31.4 Safety Data Sheets (SDS) must be supplied with the delivery for all hazardous materials, and the information contained in the data sheets must meet the legal requirements of the Health & Safety at Work Act, and the Health and Safety Executive guidance in force as at the date of Delivery.
- 31.5 In respect of the provision of Goods, You must provide said Goods that meet all relevant statutory provisions with regard to the design, manufacture, installation, use and maintenance having regard to the geographical location in which the goods are put into use. In respect of suppliers of new machinery and equipment must ensure that the machinery and equipment meets essential health, safety and environmental requirements, with particular regard to the Provision and Use of Work Equipment Regulations 1998, which will enable it to be labelled with a CE mark (if applicable). All relevant goods must be CE marked and You must provide to Us the EC Declaration on Conformity upon delivery of the Goods
- 31.6 In respect of the provision of Construction Work, You must be registered with a scheme which is a member of Safety Schemes in Procurement (SSIP) (or be able to demonstrate that You meet the assessment requirements of Stage 1 of the Core Criteria as required for accreditation in the SSIP scheme) or be a member of a professional body relevant to the services being provided.
- 31.7 In respect of the provision of Services, You will comply with the University of Warwick Code of Conduct, as updated from time to time

32 Assignment

- 32.1 You shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of Your rights and obligations under this Contract without Our prior written consent.

33 Sub-Contracting

- 33.1 You shall not sub-contract any part of the Contract without Our written consent..
- 33.2 The restriction contained in this condition shall not apply to sub-contracts for materials for minor details or for any part of which the makers are named in the Contract. You shall be responsible for all Services performed and Goods supplied by all sub- contractors.
- 33.3 In the event that You enter into a subcontract in connection with this Contract, You remain fully responsible and liable in respect of Your obligations under this Contract and the performance of Your subcontractors
- 33.4 If You propose to enter into any sub-contract in connection with this Contract You shall provide Us with the following information about the proposed sub-contractor:
- 33.4.1 its name, registered office and company registration number, contact details and legal representatives;
- 33.4.2 any further information reasonably requested by Us.
- 33.5 If the supply of information required pursuant to clause 33.4 would amount to a breach of any rules and regulations of any exchange on which Your shares are admitted for listing and/or trading, or any other rules or regulations with which You are obliged to comply as a result of that listing, You shall provide Us with the relevant information to the fullest extent permitted by those rules and regulations.
- 33.6 Where You enter into a sub-contract for the purpose of performing Your obligations under the Contract, You shall

- 33.6.1 ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by You to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 33.6.2 Implement due diligence procedures for Your own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in Your supply chains

34 Notices

- 34.1 All notices required to be sent by You or Us in this Contract shall be made in writing and sent by first class mail and if sent to You sent to Your registered or head office and if sent to Us sent to; the Head of Procurement and Insurance, University of Warwick, Coventry, CV4 7EZ , and shall be deemed to have reached the party to whom it is addressed two (2) business days following the date of posting.

35 Waiver

- 35.1 No failure or delay on Our part to exercise any of Our rights under the Contract shall operate as a waiver thereof nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by Us of any breach by You of any of Your obligations under the Contract shall not affect Our rights in the event of any further or additional breach or breaches.

36 Validity

- 36.1 If any provision of these clauses is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these clauses and the remainder of the provision in question shall not be affected thereby.

37 Dispute Resolution

- 37.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each party.
- 37.2 If the dispute cannot be resolved by the parties within one (1) month of being escalated as referred to in clause 37.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.
- 37.3 If the parties fail to appoint a Mediator within one (1) month, or fail to enter into a written agreement resolving the dispute within one (1) month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.

38 Entire Agreement

- 38.1 These Terms together with those documents comprising the Contract constitute the entire agreement between the parties in relation to its subject matter and supersede all prior agreements and understandings or discussions between the parties other than representations made fraudulently.

39 Anti-bribery

39.1 In connection with this or any other Contract between You and Us You shall not give, provide, or offer to Our Personnel and agents any loan, fee, reward, gift or any emolument or advantage whatsoever. In the event of any breach of this clause, We shall, without prejudice to any other rights We may possess, be at liberty forthwith to terminate this and any other Contract and to recover from You any loss or damage resulting from such termination.

39.2 You shall:

39.2.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010;

39.2.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

39.2.3 comply with and maintain in place throughout the term of this Contract Your own anti-bribery and anti-corruption policies as well as Adequate Procedures (as defined in S7(2) of the Bribery Act 2010- and the guidance provided under S9)

39.3 Failure to comply with clause 39 may result in the immediate termination of this Contract.

40 Anti-slavery

40.1 In performing Your obligations under this Contract, You shall and shall ensure that each of Your subcontractors shall comply with the Modern Slavery Act 2015, the University of Warwick Anti-slavery Policy and the requirements set out in Schedule 1 University of Warwick Supply Chain Requirements in Respect of Modern Slavery and Human Trafficking.

41 Third Party Rights

41.1 For the avoidance of doubt, nothing in these Terms shall confer on any third party any benefit or right to enforce any provision of the Contract.

42 Law and Jurisdiction

42.1 The validity, construction and performance of the Contract, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the parties submit.

Schedule 1

University of Warwick Supply Chain Requirements in Respect of Modern Slavery and Human Trafficking

The University of Warwick is committed to carrying out procurement activities in a socially, ethically and economically responsible manner and to entering into agreements and contacts with suppliers that share and adhere to its vision. To demonstrate this commitment, Suppliers must comply with the principles of this statement and make all reasonable endeavours to ensure compliance across its supply chains.

42.1.1 Principles:

Not to employ, support or condone any form of Modern Slavery or Human Trafficking and to comply with the Modern Slavery Act 2015

Not to use forced, involuntary or underage labour

- Employees should be free to choose their employment and leave that employment without hold by financial deposit or personal items.
- Forced, bonded or involuntary prison labour shall not be used.
- Support the effective abolition of child labour
- Comply with the national minimum age for employment, unless a lower local minimum age is permitted under International Labour Organisations (ILO) convention 138
- Where any child is found to be engaged in or performing child labour, to provide support for that child to enable them to complete, as a minimum, their compulsory education (even if they shall cease to be involved in child labour), or an equivalent educational level, as provided for under the UN Covenant on Economic, Social and Cultural Rights. Such support by the supplier should recognise and not prove detrimental to the conditions of the child or those that their work supports.

To provide suitable working conditions and terms

- To comply as a minimum with all UK statutory pay rates, as may be updated from time to time.
- The above must be paid without discrimination to all employees and all non-statutory deductions must be with the consent of the employee.
- Working hours must not be excessive. A safe and hygienic environment is provided
- Any hazardous working, as defined by ILO, should only be carried out by persons aged 18 years or over.
- Policies and processes must be in place for recording and eliminating occurrence/reoccurrence of health and safety related incidents.

To treat employees fairly

- Allow employees the freedom of association to join (but not be forced to join) or be represented by a trade union or similar organisation of their choice
- Provide a workplace free from discrimination, harassment or victimisation
- Treat all employees with respect and dignity, and not accept inequality as justifiable of any characteristics listed above, unless statutory conditions require otherwise.
- Remunerate all employees equally at the same employment grade, regardless of any characteristics listed above, unless statutory conditions require otherwise.

The University reserves the right to seek further evidence of your approaches to ensuring that Modern Slavery in all its forms is not occurring within your supply chains.

Should your organisation's turnover be £36M or above, you are required to publish a Modern Slavery Statement annually.

Schedule 2

University of Warwick Supply Chain Requirements in Respect of Equal Opportunities

In accordance with its commitment to equality and diversity and its responsibilities under the Equality Act 2010 of Great Britain as amended from time to time (the 'Act'), the University of Warwick requires its suppliers to comply with the following:

1. You will comply with the Act in Your employment practices and service delivery under the Contract. This includes not discriminating unlawfully on the grounds of the following protected characteristics recognised within the Act:
 - age
 - disability
 - gender reassignment
 - marriage and civil partnership
 - pregnancy and maternity
 - race
 - religion or belief
 - sex
 - sexual orientation

For example: information on what constitutes unlawful discrimination and the services to be delivered under this contract can be found at; <http://www2.warwick.ac.uk/services/qualops/equalitylegislation/>

2. You will maintain an appropriate written equality and diversity policy in respect of the protected characteristics that covers unlawful discrimination and prohibited conduct in recruitment, selection, training, promotion and discipline and dismissal. You shall communicate this policy to Your staff and workers and take all reasonable steps to ensure their observance of it. The University reserves the right to request a copy of this policy at any point during the procurement process or resulting contacting term.

Further information on the Equality Act and The Public Sector Equality Duty (PSED) can be found at; <https://www.gov.uk/equality-act-2010-guidance>

3. You will comply with the Act in Your dealings with sub-contractors and will impose the obligations outlined in this section of the Contract on Your sub-contractors.
4. You will comply with the PSED under the Act for goods and/or services provided to, and/or delivered on behalf of, the University, where it is relevant to the subject of this Contract, having due regard to the need to:
 - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the act
 - advance equality of opportunity between people who share a protected characteristic and people who do not

- foster good relations between people who share a protected characteristic and people who do not
5. You will provide within [five] working days of receipt of a request any information the University reasonably requires about Your policies and practices concerning the promotion of equality in employment and service delivery.
 6. You will monitor and report in writing the composition of its employees by protected characteristic as specified by the University (as referenced in point 1).
 7. Where the You, Your employees or sub-contractors work on University premises or alongside the University's staff or students, You will comply, and ensure that Your employees and sub-contractors comply, with the University's own policies relating to equality and diversity. These policies are supplied at: <http://www2.warwick.ac.uk/services/equalops/equalitylegislation/>

Any breach of the conditions in this section by You will entitle the University to take immediate remedial action to prevent recurrence or in cases of material breach, to terminate the contract.

Schedule 3

DATA COMPLIANCE SCHEDULE

1. DEFINITIONS

In this Schedule 3 the following definitions shall apply:

"Controller", "Processor", "Data Subject" "Personal Data" and "Sensitive Personal Data/Special Category Data " shall have the meaning given to those terms in the applicable Data Protection Laws;

"Data Protection Impact Assessment" means an assessment of the impact of the envisaged Processing operations on the protection of Personal Data, as required by Article 35 of the GDPR;

"Data Protection Laws" means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject, including the Data Protection Act 1998, the Data Protection Act 2018 and, the General Data Protection Regulation ("GDPR") 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, and all legislation enacted in the UK in respect of the protection of personal data as well as the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) including any relevant replacement/subsequent European and/or UK legislation together with all codes of practice and other guidance on the foregoing issued by any relevant Data Protection Authority, all as amended from time to time;

"Data Subject Request" means an actual or purported request or notice or complaint from or on behalf of a Data Subject exercising his rights under the Data Protection Laws in relation to Personal Data including without limitation: the right of access by the Data Subject, the right to rectification, the right to erasure, the right to restriction of processing, the right to data portability and the right to object;

"Regulator" means the UK Information Commissioner's Office, or any successor or replacement body from time to time; also means the relevant local governmental or other official regulator(s) responsible for enforcement of the Data Protection Legislation from time to time in relation to the University of Warwick

"Regulator Correspondence"	means any correspondence or communication (whether written or verbal) from the Regulator in relation to the Processing of Personal Data;
"Losses"	means all losses, fines, penalties, liabilities, damages, costs, charges, claims, amounts paid in settlement and expenses (including legal fees (on a solicitor/client basis), disbursements, costs of investigation (including forensic investigation), litigation, settlement (including ex gratia payments), judgment, interest and penalties), other professional charges and expenses, disbursements, cost of breach notification including notifications to the data subject, cost of complaints handling (including providing data subjects with credit reference checks, setting up contact centres (e.g. call centres) and making ex gratia payments), all whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Permitted Purpose"	means the purpose of the Processing
"Personal Data"	means any personal data (as defined in the Data Protection Laws) Processed by either Party in connection with this Agreement, and for the purposes of this Agreement includes Sensitive Personal Data/Special Category Data
"Personal Data Breach"	has the meaning set out in the Data Protection Laws and includes any actual or suspected, threatened or 'near miss' personal data breach in relation to the Personal Data and, for the avoidance of doubt, includes a breach of Paragraph 1.2.1(d);
"Personal Data Breach Particulars"	means the information that must be included in a Personal Data Breach notification, as set out in Article 33(3) of the GDPR and Appendix 1;
"Project Personnel"	means all persons engaged or employed from time to time by [the Service Provider] in connection with this Agreement, including employees, consultants, contractors and permitted agents;
"Processing"	means any use of or processing applied to any Personal Data and includes "process" or "processing" as defined in applicable Data Protection Legislation. For the avoidance of doubt, this includes, without limitation, collecting, recording, organising, structuring, storing, adapting, altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying Personal Data

"Third Country"	means a country, territory or jurisdiction outside of the European Economic Area which the EU Commission has not deemed to provide adequate protection in accordance with Article 25(6) of the DP Directive and/ or Article 45(1) of the GDPR (as applicable);
"Security Measures"	means the requirements regarding the security of Personal Data, as set out in the Data Protection Laws and the measures set out in Articles 28 and 32 of the GDPR as applicable
"Security Incident"	includes any actual or suspected, threatened or 'near miss' in relation to the security measures set out in Articles 28 and 32 GDPR as applicable
"Services"	Means the services (if any) described in the Purchase Order and
"Third Party Request"	means a written request from any third party for disclosure of Personal Data where compliance with such a request is required or purported to be required by law or regulation.

1. DATA PROTECTION

1.1 Arrangement Between The Parties

- 1.1.1 The Parties shall each Process the Personal Data. The Parties acknowledge that the factual arrangements between them dictate the classification of each Party in respect of the Data Protection Laws. Notwithstanding the foregoing, the Parties anticipate that, in respect of the Personal Data, as between us for the purposes of this Agreement, We shall act as the Controller and You shall act as the Processor, as follows:
- (a) We shall be the Controller where we are Processing Personal Data in relation to our status as a public authority and higher education provider; and
 - (b) You shall be the Data Processor where you are Processing Personal Data in relation to the Permitted Purpose in connection with the performance of your obligations under this Contract.
- 1.1.2 Nothing within this Agreement relieves you of your own direct responsibilities and liabilities under the Data Protection Laws.
- 1.1.3 Each Party shall be responsible for its own notification under the requirements of the GDPR.
- 1.1.4 You undertakes to Us that You will take all necessary steps to ensure that You operate at all times in accordance with the requirements of the Data Protection Laws and You will, at Your own expense, assist Us in discharging Our obligations under the Data Protection Laws as more particularly detailed in this Paragraph

(Data Protection). You shall not, whether by act or omission, cause Us to breach any of our obligations under the Data Protection Laws.

1.2 Data Processor Obligations

- 1.2.1 To the extent that You Process any Personal Data as a Processor for and on behalf of Us (as the Controller) You shall:
- (a) only Process the Personal Data for and on behalf of Us for the purposes of performing Your obligations under this Agreement, and only in accordance with the terms of this Agreement and any documented instructions from Us;
 - (b) keep a record of any Processing of the Personal Data You carry out on behalf of Us;
 - (c) unless prohibited by law, notify Us immediately (if You consider, in Your opinion (acting reasonably) that You are required by Applicable EU Law to act other than in accordance with our instructions, including where You believe that any of our instructions under Paragraph infringe any of the Data Protection Laws;
 - (d) take, implement and maintain appropriate technical and organisational security measures;
 - (e) and where requested provide Us with evidence of Your compliance with such requirements immediately hold the Personal Data in such a manner that is capable of being distinguished from other data or information processed by You
 - (f) immediately upon our request, allow Your data processing facilities, procedures and documentation to be submitted for scrutiny, inspection or audit by Us (and/ or its representatives, including its appointed auditors) in order to ascertain compliance with the terms of this Paragraph, and provide information, assistance and co-operation to Us, including access to relevant Personnel and/ or, on our request, provide Us with written evidence of Your compliance with the requirements of this Paragraph.
 - (g) not disclose Personal Data to a third party (including a sub-contractor) in any circumstances without our prior written consent, save in relation to Third Party Requests where you are prohibited by law or regulation from notifying Us, in which case it will advise Us in advance of such disclosure and in any event as soon as practicable thereafter;
 - (h) promptly comply with any request from Us to amend, transfer or delete any Personal Data held on the live system or backup systems, or any other media, including those held within archive when requested by Warwick
 - (i) notify Us immediately following Your receipt of any Data Subject Request or Regulator Correspondence and shall:

- (i) not disclose any Personal Data in response to any Data Subject Request or Regulator Correspondence without first consulting with and obtaining Our prior written consent; and
 - (ii) not delete any Personal Data in response to any Data Subject Request or Regulator Correspondence without first consulting with and obtaining Our prior written consent; and
 - (iii) provide Us with all co-operation and assistance required in relation to any such Data Subject Request or Regulator Correspondence;
- (j) notify Us in writing immediately by following the procedure set out in Appendix 1 upon becoming aware of any actual or suspected, threatened or 'near miss' Security Incident or Personal Data Breach in relation to the Personal Data and shall:
 - (i) conduct or support Us in conducting such investigations and analysis that We reasonably requires in respect of such Personal Data Breach;
 - (ii) implement any actions or remedial measures necessary to restore the security of compromised Personal Data; and
 - (iii) assist Us to make any notifications to the Regulator and affected Data Subjects;
- (k) comply with the obligations imposed upon a Processor under the Data Protection Laws;
- (l) assist Us to comply with the obligations imposed on Us by the Data Protection Laws, including:
 - (i) compliance with the Security Measures;
 - (ii) obligations relating to notifications required by the Data Protection Laws to the Regulator and/ or any relevant Data Subjects;
 - (iii) undertaking any Data Protection Impact Assessments (and, where required by the Data Protection Laws, consulting with the Regulator and/or any other relevant regulatory body in respect of any such Data Protection Impact Assessments); and
 - (iv) without undue delay and where feasible not later than 72 hours after having become aware of it notify Personal Data Breaches to the Regulator and/or any other relevant regulatory body unless the Personal Data Breach is unlikely to result in a risk to the rights and freedoms of natural persons;
- (m) Upon the earlier of:

- (i) termination or expiry of this Agreement (as applicable); and
- (ii) the date on which Personal Data is no longer relevant to, or necessary for, the Permitted Purpose

You shall cease Processing all Personal Data and return and/ or permanently and securely destroy so that it is no longer retrievable (as directed in writing by Us) all Personal Data and all copies in Your possession or control including where applicable any backup copies or stored archive copies of the Personal Data and, where requested by Us, certify that such destruction has taken place (promptly, and in any event within forty-eight (48) hours of the request) except to the extent required by applicable EU law to retain the Personal Data;

- (n) not make (nor instruct or permit a third party to make) a transfer of any Personal Data to a Third Country except with Our prior written consent and in accordance with any terms We may impose on such transfer as We deems necessary to satisfy the requirements to ensure that transfers of Personal Data outside of the EEA have adequate protections in place as set out in the Data Protection Laws;

1.2.2 Except as otherwise provided, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any intellectual property rights in any Personal Data.

1.3 **Supplier Personnel**

1.3.1 You shall only disclose Personal Data to Your Personnel that are required to assist You in meeting Your obligations under this Agreement (the "**Project Personnel**") and shall ensure that no other Personnel shall have access to such Personal Data.

1.3.2 You shall only disclose Personal Data to the Project Personnel where the following conditions have been satisfied in relation to such Project Personnel:

- (a) You will have taken (and shall continue to take) all steps to ensure the reliability and integrity of each member of the Project Personnel;
- (b) each member of the Project Personnel shall have been subject to adequately clear pre-employment checks);
- (c) each member of the Project Personnel shall have undergone, and shall continue to receive on an annual basis, appropriate training in Data Protection Laws and in the care and handling of Personal Data; and
- (d) each member of the Project Personnel shall have entered into appropriate contractually-binding confidentiality undertakings.

1.4 **Sub-contractors**

1.4.1 You shall not sub-contract the performance of any of Your obligations under this Agreement without our prior written Consent;

2. INDEMNITY

2.1.1 You shall indemnify on demand and keep indemnified Us from and against: any monetary penalties or fines levied by the Regulator on Us; the costs of any investigative, corrective or compensatory action required by the Regulator and/or any other regulator, or of defending proposed or actual enforcement taken by the Regulator and/or any other regulator;

2.1.2 any Losses suffered or incurred by, awarded against, or agreed to be paid by, Us pursuant to a claim, action or challenge made by a third party against Us (including by a Data Subject); and

2.1.3 except to the extent that Paragraphs 2.1.1 and/ or 2.1.2 apply, any Losses suffered or incurred, awarded against, or agreed to be paid by Us,

in each case to the extent arising as a result of a breach by You of this Agreement and/ or their respective obligations under the Data Protection Laws.

2.2 Nothing in this Agreement will exclude, limit or restrict Your liability under the indemnity set out in Paragraph 2.

Appendix 1

NOTIFICATION PROCEDURE TO THE CONTROLLER IN THE EVENT OF A DATA BREACH OR SECURITY INCIDENT

1. You must contact Our Data Protection Officer at Warwick at :

DPO@warwick.ac.uk

2. Describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned, and the categories and approximate number of personal data records concerned;
3. Communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;
4. Describe the likely consequences of the personal data breach;
5. Describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects; and
6. Where it is not possible to provide all the information at the same time, the information should be provided in phases as and when it becomes available, without undue further delay.