



## Standard Terms and Conditions for the Supply and Installation of Goods

between

The University Court of the University of Edinburgh, a charitable body registered in Scotland under the registration number SC005336, incorporated under the Universities (Scotland) Act and having its principal administrative offices at Old College, South Bridge, Edinburgh EH8 9YL (the "University")

and

The Person, firm, company or other body accepting the Purchase Order (the "Seller")

### WHEREAS

- A. The Seller is engaged in the business of supply and installation of Goods and/or provision of Services;
- B. The University has agreed to purchase from the Seller (or by any of the Seller's sub-contractors) certain Goods and/or services as more specifically detailed in the Purchase Order;
- C. These "Standard Terms & Conditions relating to the supply and installation of Goods" are intended to make clear in as straightforward a manner as possible the way the University expects the Seller to implement and fulfill the Purchase Order. This benefits the University and the Seller to understand their relationship under the Purchase Order and avoid any misunderstandings or uncertainty in the future.

### NOW THEREFORE

#### 1. DEFINITIONS

In these Conditions (including the recitals), the following words and expressions have the following meanings unless inconsistent with the context:-

- 1.1 "Acceptance Certificate" has the meaning given in Clause 16.4;
- 1.2 "Acceptance Date" shall mean the date of the Acceptance Certificate or, if there is no Acceptance Certificate, the date on which the University has accepted the goods and Services in accordance with Clauses 15 and 16;
- 1.3 "Attachment" shall mean a document attached to these General Conditions of Contract and/or attached to or referred to in a Purchase Order;
- 1.4 "Authorised" shall mean the signature of an authorised representative of the University who is either named on the face of the Purchase Order and/or notified to the Seller by the University as being an authorised representative;
- 1.5 "Award Letter" shall mean the letter issued by the Lead Role notifying the Seller that it has been selected as the successful tenderer for the supply and Installation of Goods and/or the provision of Services of the type specified in the Purchase Order subject to these General Conditions of Contract;
- 1.6 "Completion Date" shall mean the date specified on the Purchase Order, or in any Attachment, for the completion of the Delivery, and/or where applicable, the date by which it is intended that the Acceptance Certificate will be signed by the University;
- 1.7 "Contract" shall mean the legally binding agreement made between the University and the Seller for the supply and Installation of Goods and/or the provision of Services;
- 1.8 "Delivery" shall mean the delivery (including off loading and setting in the designated place) of the Goods to the Site 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;
- 1.9 "General Conditions of Contract" shall mean these general conditions of contract for the supply and installation of Goods and/or supply of Services;
- 1.10 "Goods" and "Services" shall mean the goods and services respectively as described in the Purchase Order, the Attachment and/or the Award Letter or any other document referenced in those documents;

1.11 "Installation" shall mean the installation of the Goods, in the designated location and into the operating environment specified by the University at the Site; and 'Install' shall be interpreted accordingly;

1.12 "Intellectual Property Rights" shall mean patents, copyright, registered and unregistered design rights, utility models, trade-marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country, and all rights to apply for or register such rights;

1.13 "Lead Role" shall mean the University (whether or not the University is in the lead role for the administration of a co-ordinated procurement process on behalf of the Higher Education Sector for the supply of goods and/or services of the type specified in the Purchase Order);

1.14 "Manufacturer" shall mean the original manufacturer of the Goods or the person who attaches its brand to the Goods;

1.15 "Packaging" means the packaging for the Goods, including without limitation, bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers;

1.16 "Personnel" shall mean all authorised personnel employed by the Seller (and including the personnel of any agent or sub-contractor of the Seller) for the purpose of performing the Contract;

1.17 "Price" shall mean the agreed price of the Goods and Services as set out on the Purchase Order and/or in the Attachment, net of discounts and VAT. The Price shall be deemed to be the fixed Price, and no variation of the Price nor reconciliation of costs is permitted;

1.18 "Programme of Delivery" shall mean the timetable (if any) for Delivery and Installation of the Goods and/or the provision of the Services as set out in the Attachment;

1.19 "Purchase Order" shall mean the purchase order form issued by the University which details the instructions to the Seller and the goods and services to be provided by the Seller;

1.20 "Site" shall mean the location(s) for the Delivery and Installation of the Goods as specified in the Purchase Order and/or Attachment;

1.21 "Specification" shall mean any technical specification for the Goods or Services contained and/or referenced on the Purchase Order; in an Attachment and/or referenced in the Award Letter, or any combination of the foregoing;

1.22 "Variation" shall mean any alteration or variation to the Contract confirmed by the issue of an instruction to alter or vary the Contract in accordance with Clause 13;

1.23 "Warranty Period" shall mean the period applicable to the Goods and Services as defined in Clause 25.2;

1.24 "Warranty Services" shall mean such maintenance, repair and other services that are required to be provided in order to reinstate the Goods and/or the Installation or any part thereof to the standards of performance, and/or to provide the Services to standards, that are in accordance with, and as detailed in the Contract.

#### 2. APPLICATION

2.1 The Contract will come into effect when an Authorised Purchase Order referencing the Award Letter is issued by the University and posted or transmitted by fax to the Seller, provided in the case of fax transmission, that the University has a transmission report confirming that the complete document was successfully transmitted to the correct fax number.

2.2 The Contract incorporates the documents referenced in the Award Letter (including these General Conditions of Contract) and these documents comprise the entire agreement between the University and Seller. If there is any conflict between the terms of the documents listed in the Award Letter, the documents will apply in the order that they are listed in the Award Letter, with the terms of those listed higher up having precedence, but only to the extent necessary to resolve any conflict.

2.3 The General Conditions of Contract apply in preference to and supersede any terms and conditions referred to, offered or relied on by the Seller at any stage in the dealings between the University and the Seller with reference to the Goods and Services and the Installation to which the Contract relates. Without prejudice to the generality of the aforementioned, the University will not be bound by any standard or printed terms referred to, or furnished by the Seller in any of its documents. In this context, quotations referred to in the Contract are generally referenced for delivery

and quantity detail only, but may, in the absence of any other references to documentation in the Contract, also be referenced for the purposes of specifying the Goods and/or Services and/or the Installation to be supplied under the provisions of the Contract. These General Conditions of Contract also apply in preference to, and supersede, any terms and conditions which appear on, or are attached to, any Purchase Order issued by the University and forming part of the Contract, which shall apply only in so far as they are not inconsistent with these General Conditions of Contract.

- 2.4 This Contract supersedes all previous agreements, arrangements and undertakings, express or implied between the University and the Seller related to the subject matter of the Contract. No addition or modification of any provision of the Contract shall be binding upon the other party unless it is made in accordance with clause 13.1.

### 3. AUTHORITY

- 3.1 The University shall not be liable for any Purchase Order, variation, letter of intent, or instructions to proceed with a Purchase Order unless and until it has been Authorised.

### 4. PRICES

- 4.1 Unless specifically agreed in the Contract all prices shall be in UK Pounds Sterling and shall be a fixed price for the duration of the Contract, inclusive of all costs, including, without limitation, carriage, packaging and certification (where required), but exclusive of VAT. Prices shall be deemed to be exclusive of duty unless otherwise specified on the face of the relevant Purchase Order.

### 5. SELLER TO INFORM ITSELF FULLY

- 5.1 The Seller shall be deemed to have examined the Specification and these General Conditions of Contract. No claims from the Seller for additional payment will be allowed on the grounds of misinterpretation of the Specification (whether it was prepared by the University or by the Seller) or these General Conditions of Contract.

### 6. THE INSTALLATION SITE

- 6.1 Unless otherwise specified in an Attachment and/or otherwise agreed in writing and/or stated on the face of the Purchase Order, the Seller shall be required to undertake a visit to the Site and shall:-
- 6.1.1 issue a report detailing work to be carried out to prepare the Site for the Delivery and/or Installation of the Goods in the designated place; or
- 6.1.2 issue a certificate, stating that the Site is suitable and acceptable for the Delivery and/or Installation or use of the Goods in the designated place to commence and proceed with the Delivery and Installation; and
- 6.1.3 include in the report and/or certificate confirmation that the Site conditions, layout and design and/or other provisions related to the Site are suitable and such that the Seller can Deliver, set down and Install the Goods in the designated place (and the University will be able to use the Goods in the designated place) or notification to the University of any work or requirements that need to be completed in order that the Seller is able to gain access to and undertake Delivery and Installation of the Goods to, and at, the Site and the University is able to put the Goods to use at the Site. If the Seller does not notify the University of any such work or requirements, the Seller shall be deemed to have accepted that the Site is suitable and shall proceed with the Delivery and Installation.
- 6.2 The report issued by the Seller in accordance with Clause 6.1.1 above must supply adequate information in sufficient time to enable the University to prepare the Site for the Installation, and enable the University to provide:-
- 6.2.1 a suitable supply of electric current and such other mains services as may be required;
- 6.2.2 all other required electrical and mechanical items and fittings, as specified by the Seller at the time of awarding the Contract and agreed by the University (other than the Goods);
- 6.2.3 such facilities and environmental conditions as defined on the Purchase Order and/or in any Attachment; and
- 6.2.4 access to, and egress from, the Site and/or the designated place for the Delivery and Installation of the Goods to enable the Delivery, off-loading and placing in position of the Goods (including, without limitation, appropriate access and egress that enables the Seller to deliver and remove any equipment, tooling or other facilities required for the purposes of undertaking and completing the Delivery and Installation of the Goods) which complies with any

specific requirements set out in the report.

- 6.3 In circumstances where the Seller issues a report in accordance with Clause 6.1.1, the Seller shall be required to re-examine the Site upon the notification by the University that any work specified in the report has been completed and issue a certificate in accordance with Clause 6.1.2, or apply the provisions of Clause 6.1.1 as appropriate.
- 6.4 The University at its own expense shall ensure that such preparations and provisions made known in writing to the University by the Seller are made such that the Seller is able to Deliver the Goods and/or Services on the date specified for Delivery and Installation on the Purchase Order and/or in any Programme of Delivery and/or Installation contained in any Attachment. In the event that such preparation and provision are unsuitable for the purpose of the Installation as the result of an act or default of one party, then any costs which the other party can demonstrate as being reasonably and necessarily incurred as a direct result of that act or default shall be recoverable from the defaulting party.

### ACCESS

- 7.1 The University shall afford to the Personnel at all reasonable times and with prior agreement, such access to the Site, (but not necessarily sole access) as may be necessary for the inspection of the Site and for the execution of Delivery and Installation, providing always that the University shall have the right to refuse to admit to, or order the removal from, the Site of any person employed by, or acting on behalf of, the Seller, or any authorised sub-contractor who, in the sole opinion of the University (which shall be final), is not a fit and proper person to be on the Site. Action under this Clause shall not relieve the Seller of any of its obligations under the Contract.
- 7.2 The Seller must take reasonable care to ensure that, in the execution of the Delivery and Installation, they do not interfere with the operations of the University, its employees or any other contractor employed on the Site.
- 7.3 The Seller may work on the Site only with the permission of the University.
- 7.4 The Seller shall, without prejudice to any other obligations to the University with regard to access to the Site:-
- 7.4.1 comply at all times with its statutory obligations in respect of Health and Safety at Work and the University's policies, procedures and/or reasonable instructions in respect of Health and Safety;
- 7.4.2 comply with any policies, procedures and/or reasonable instructions of the University with regard to security when attempting to gain access to and egress from, and at all times when working on, the Site;
- 7.4.3 comply with any policies, procedures and/or instructions of the University in respect of the use of any services and/or facilities to be provided by the University in accordance with the Contract and/or as may otherwise be reasonably required in order that the Seller is able to meet its obligations under the Contract;
- 7.4.4 comply with any policies, procedures and/or instructions of the University in respect of the Site and/or any other of the University's sites to which the Seller may have access for any purpose;
- 7.4.5 ensure that any Installation and/or other Services which require the attendance of the Seller on the Site be undertaken during the University's standard operational hours unless otherwise agreed by the University; and
- 7.4.6 leave the Goods and the Site in a clean and tidy condition at the end of each visit and upon completion of the Installation.
- 7.5 The Seller shall ensure that all Personnel shall comply with its obligations set out in Clauses 7.1 to 7.4 inclusive above.

### 8. QUALITY

- 8.1 The Goods and/or Services and/or the Installation supplied and/or provided under the Contract shall:-
- 8.1.1 comply with the express terms of the Contract and implied conditions, warranties and terms contained in the Sale of Goods Act 1979, and/or the Supply of Goods and Services Act 1982, as amended by any related statutes, and any statutory re-enactment(s) or modifications thereof;
- 8.1.2 be fit for any purpose made known to the Seller expressly and by implication, and in this respect the Seller accepts that the University has relied, and shall continue to rely, on the Seller's skill and judgement; and
- 8.1.3 be new (unless otherwise stated on the Purchase Order that

Goods are not new, but second hand and used), but in any event, whether the Goods are new or otherwise, the Goods and/or the Installation and any parts thereof shall be of good construction, sound materially, of adequate strength and free of defects in design, materials and workmanship.

- 8.2 Without prejudice to the provisions of Clause 8.1 the Goods and/or Services and/or the Installation shall comply with all appropriate European Union Directives applicable and relevant to the Goods and/or Services at the date of the Contract (in which case all Goods supplied must be clearly endorsed as being fully compliant as set out above by the application of the CE Mark in a position on the Goods which meets the requirements of the Directives and/or the Seller shall be obliged to provide copies of relevant test or other certification in respect of the Goods and/or Services at the request of the University) and/or with any specification of the British Standards Institution (or equivalent) which is relevant to the Goods and Services at the date of the Contract.

## 9. STANDARDS OF THE INSTALLATION

- 9.1 The work required of the Seller to complete Installation shall be as defined on the Purchase Order and/or in any Attachment.
- 9.2 Without reducing the scope of any obligations imposed on the Seller by the terms of the Contract with regard to the standard of the Installation, the Seller shall use good quality materials, techniques and standards to execute the Installation with the care, skill and diligence required in accordance with the best industry practice.

## 10. MISTAKES IN INFORMATION

- 10.1 The Seller shall be responsible for and shall pay any extra costs occasioned by any discrepancies, errors or omissions in drawings, documentation or other information supplied in writing by the Seller whether or not approved by the University, provided that such discrepancies, errors or omissions are not due to inaccurate drawings or information and decisions supplied in writing to the Seller by the University.
- 10.2 The University shall be responsible for, and shall pay any additional costs which the Seller can demonstrate as being reasonably and necessarily incurred as a direct result of the Seller acting upon any discrepancies, errors or omissions in any drawings, information and decisions supplied in writing to the Seller, by the University. Any claims under this Clause must be made in writing, and will only be paid if accepted by the University by means of the issue of a Variation.

## 11. PROGRAMME OF DELIVERY AND/OR INSTALLATION

- 11.1 The Delivery and/or Installation shall be carried out in accordance with the Programme of Delivery set out in the Attachment, or in the absence of a Programme of Delivery, the Delivery and/or Installation shall be completed by the date or dates specified for Delivery and/or Installation specified on the Purchase Order or in the Attachment.

## 12. PACKAGING, MARKING AND DELIVERY

- 12.1 All Goods must be adequately protected against damage and deterioration in transit and delivered, carriage paid. Any information related to the handling and storage of Goods upon receipt must be clearly marked on the packaging and accompanying paperwork. The Goods shall be at the Seller's risk until Delivered. The Seller will collect and dispose of all Packaging in accordance and compliance with all legislation and statutory obligations relevant and applicable to the collection and disposal of such Packaging at no cost to the University.
- 12.2 No Deliveries shall be made to the Site without the prior permission of the University, and the Seller will seek that permission at least two (2) working days before the intended delivery time.
- 12.3 The Seller shall provide all necessary labour, materials and plant required for the Delivery and Installation.
- 12.4 The Goods shall be transported and off-loaded at the sole risk and expense of the Seller. The Seller shall be responsible for the safe custody of any equipment (not being the Goods) which is the property of the Seller whilst it is held on the University's property until the Acceptance Date, after which the Seller shall remove such equipment leaving the Site and premises in a clean and tidy condition. For the avoidance of doubt, any goods and/or equipment (not being the Goods) which are the property of the Seller shall be held on the Site at the sole risk of the Seller. The University shall not be liable for any loss or damage to the aforementioned Seller's goods and/or equipment howsoever caused, and shall have the right to charge for storage of the goods and/or equipment in the event that the Seller fails to remove its goods or equipment from the Site within a reasonable period of time following Delivery.

## 13. VARIATIONS

- 13.1 Neither party shall alter any part of the Contract without the prior written

agreement of the other party. The Seller shall not unreasonably withhold, deny or delay giving its approval to any request to alter any part of the Contract made by the University. Alterations to the Contract requested by either party from time to time during the period of the Contract shall, once agreed, be confirmed by the issue of a Variation by the University and will not be effective until the date on which the Variation is issued. The Seller shall carry out such Variations and the parties shall be bound by the same conditions as set out in the Contract, so far as they may be applicable, as though the said Variations were stated in the Contract.

- 13.2 Without prejudice to the foregoing, if an alteration to the Contract is required by either party, the other party shall state in writing the effect such alteration shall have on the Delivery and/or Installation of, and/or the Programme of Delivery and/or Installation for, the Goods and/or the provision of the Services and what adjustment, if any, will be required to the Price and/or Completion Date.

## 14. DELAYS BY THE SELLER

- 14.1 Any time or period for Delivery, despatch, Installation and/or completion shall be of the essence of the Contract. If the Seller fails to complete:-
- 14.1.1 any specific part or stage of the Installation by the date(s) specified in the Purchase Order, an Attachment or a Variation;
- 14.1.2 the Delivery and/or Installation of the Goods and/or Services by the Completion Date (or such revised dates as may be agreed in accordance with Clause 13)

the University shall have the right exercisable by giving notice to the Seller, at its sole discretion, either to:-

- 14.1.3 terminate the Contract or any part thereof whereupon the University's rights shall be as described in Clause 17.3, or
- 14.1.4 proceed with the fulfillment of the Contract whereupon the University shall have the right to recover from the Seller any losses which it may have suffered as set out in Clause 14.2 hereof.
- 14.2 In the event that the University shall elect to proceed with the fulfilment of the Contract, and the University shall have suffered a loss, then without prejudice to any of the University's other rights and remedies, the University shall have the right to deduct, as liquidated damages and not by way of a penalty, from the Price the percentage stated in the Purchase Order and/or in any Attachment, of the Price for each week or part thereof between the Completion Date and the Acceptance Date.
- 14.3 The amount so deducted under clause 14.2 shall not exceed the maximum percentage of the total Price stated in the Purchase Order and/or in any Attachment and such deductions so made are a pre-estimate of the loss likely to be suffered by the University as a result of the failure of the Seller as set out in this Clause 14.

## ACCEPTANCE TESTS

- 15.1 The Seller shall be required to undertake Acceptance Tests as detailed on the Purchase Order and/or in any Attachment.
- 15.2 Where the details of the Acceptance Tests to be implemented in accordance with this Contract are not specified in the Purchase Order or in any Attachment, the Acceptance Tests to be administered shall be defined (in the case of Goods) as those procedures published by the Manufacturer, or, where no such procedures are published and in the case of Services, the Acceptance Tests shall be those which are generally accepted as enabling the University to satisfy itself that the Goods and/or Services or specific part thereof have been Delivered and/or Installed such that they are in accordance with the Contract.
- 15.3 If Goods are to be utilised with and/or installed on or with goods supplied by sources other than the Seller, including, but not limited to, computer application software to be utilised on or with computer hardware and operating system software to be supplied by the Seller in accordance with the Contract, the University shall have the right to require that Acceptance Tests are undertaken in respect of the Goods used in that way or Installed on or with those other goods.
- 15.4 The Seller shall give to the University 7 days written notice, or such shorter notice as may be agreed, of the date when it will be ready to commence Acceptance Tests.
- 15.5 Unless otherwise specified in the Contract, it shall be for the Seller to provide the necessary equipment, labour and things of all kinds to carry out the Acceptance Tests.
- 15.6 The Acceptance Tests shall take place on the dates specified in the Purchase Order or in any Attachment. or such dates as the University shall notify to the Seller in writing, unless otherwise agreed.

15.7 If the Seller fails to make such tests within the time stipulated, the University reserves the right to undertake the Acceptance Tests specified. All Acceptance Tests undertaken by the University shall be at the risk and expense of the Seller, unless the Seller shall establish to the satisfaction of the University that the tests were not being delayed, in which case such tests so made shall be at the risk and expense of the University.

15.8 If the Goods and/or Services or any part or stage thereof fail to pass the Acceptance Tests, repeat tests shall be carried out within a reasonable time by the Seller. In the event that the Goods and/or Services or any part or stage thereof, are not in accordance with the Contract, then, without prejudice to the University's rights under Clauses 14 & 17, the University shall have the right to:-

15.8.1 require the Seller to supply, free of all charges, such additional or replacement goods and/or services as may be necessary to enable the Goods and/or Services to pass the Acceptance Tests;

15.8.2 accept and retain such of the Goods and/or Services as the University may consider expedient at such reduced Price as may be agreed by the University and the Seller;

15.8.3 contract with a third party to enable the Goods and/or Services to pass the Acceptance Tests. In such circumstances any costs incurred shall be for the Seller's account, and shall be deducted from any sums due under the Contract, or shall otherwise be recoverable from the Seller;

15.8.4 reject the Goods and/or Services, where they are not in accordance with the Contract.

## 16. ACCEPTANCE

16.1 If the Goods or Services fail to conform with the Specification and/or the Contract, whether by reason of not being of the required quality, or fit for the purpose stipulated in the Specification, and whether the Goods and/or Services have been subjected to Acceptance Tests or otherwise, the University shall, without prejudice to its rights under Clauses 14, 17 and 25, have the right to reject such Goods and/or Services within a reasonable time after Delivery and/or Installation. The University shall be obliged to give the Seller reasonable opportunity to replace any rejected Goods and/or provide Services with Goods and/or Services which conform to the Specification and/or the Contract, but shall thereafter, without prejudice to any other right which the University may have against the Seller, have the right to purchase such Goods and/or Services of the same or substantially equal quality and/or Specification elsewhere. Any additional costs which may be incurred by the University in purchasing such Goods and/or Services shall be for the Seller's account. When Goods are rejected they will be stored at the Site, and subsequently returned, at the Seller's sole risk and expense.

16.2 Neither Delivery nor Installation nor putting into use constitutes acceptance of the Goods or Services by the University.

16.3 The making of any payment due under the Contract shall not constitute acceptance and shall not prejudice the University's rights of rejection.

16.4 Unless it is specified in the Purchase Order or any Attachment that an Acceptance Certificate is not required, then as soon as the Acceptance Tests appropriate to, or specified for, the Goods and/or Services have been completed and the Goods and/or Services have passed the Acceptance Tests, the University shall issue an Acceptance Certificate which will state the Acceptance Date and any outstanding defects in the Installation or relevant part thereof. The Seller undertakes to rectify such defects immediately and without delay and, in any case, by a specific date, which shall be binding, and which shall be agreed in writing by the parties within seven (7) working days after the Acceptance Date. If the Seller fails to remedy such defects within the period specified and agreed, the University's rights shall be as set out in Clauses 14 and 17.

## 17. TERMINATION

17.1 The University may terminate the Contract for reasons other than default on the part of the Seller by giving not less than thirty (30) days written notice to the Seller. Provided that such termination is not due to any default of the Seller, the University shall pay the Seller:

17.1.1 for any work performed and/or Goods and/or Services provided to the date of issue of termination; and

17.1.2 for any commitments, liabilities or expenditure properly, reasonably and necessarily entered into by the Seller for the sole and absolute purposes of the performance of the Contract to the extent to which the same would represent an unavoidable loss to the Seller (and which could, or can, not be reasonably avoided) as a direct result of the termination of the Contract.

The University's liability under this Clause 17.1 shall not under any circumstances exceed the Price excluding any maintenance charges, and the Seller shall be obliged to use all reasonable endeavours to mitigate the costs that it seeks to recover from the University and maintain such costs at the lowest possible level.

17.2 Either party may terminate the Contract forthwith by written notice to the other party in the event that:-

17.2.1 the other party is in breach of any of the terms of the Contract, and fails to rectify such breach within thirty (30) calendar days after receipt of the written notice from the other party specifying such breach and requiring its remedy; or

17.2.2 the other party becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with its creditors or, being a corporation, commences to be wound up or if the party attempts to carry on its business under a receiver for the benefit of any of its creditors; or

17.2.3 the other party is the subject of a take-over by or merger with another company.

17.3 If the University elects to terminate the Contract or any part thereof in accordance with clause 14.1.3, the University shall have the right to claim reimbursement from the Seller for all losses suffered as a result of the delay and/or termination.

17.4 The termination of the Contract for any reason shall not affect the rights of either party accrued up to the date of such termination.

## 18. PATENTS AND OTHER RIGHTS

18.1 The Seller shall fully indemnify the University against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights by the use or possession of the Goods and/or any product which is a tangible output of the Services subject to the following:-

18.1.1 the University shall promptly notify the Seller in writing of any alleged infringement of which they have notice;

18.1.2 the University must make no admissions without the Seller's consent; and

18.1.3 the University, at the Seller's request and expense shall allow the Seller to conduct and/or settle all negotiations and litigation, and give the Seller all reasonable assistance. The costs incurred or recovered in such negotiations or litigation shall be for the Seller's account.

18.2 If at any time any allegation of infringement of any Intellectual Property Rights is made in respect of the Goods and/or Services or in the Seller's reasonable opinion is likely to be made, the Seller may, at its own expense, modify or replace the Goods and/or Services or any part(s) thereof, without detracting from or degrading the overall performance of the Goods and/or any product which is a tangible output of the Services, the Seller making good to the University any loss of use during modification or replacement, so as to avoid the infringement. The provisions of Clause 13 shall then take effect as if the University had requested an alteration to the Contract save that the Seller shall not be entitled to any increase to the Price.

18.3 Where development forms part of the Contract the University will own any Intellectual Property Rights arising from such development and in the case of rights which can be prospectively assigned, the Seller hereby assigns those rights to the University. In the case of other rights the Seller agrees to assign them to the University as and when they arise and agrees to do all acts and execute all documents reasonably required by the University at the University's expense to perfect its title to those rights or to enable their registration anywhere in the world.

18.4 The Seller shall treat all information provided by the University as confidential and use such information only for purposes of performing the Contract or meeting its obligations under the Contract. Where drawings or other data are issued by the University or are prepared for the University by the Seller the Seller shall exercise proper custody and control and return/dispose of such in accordance with the University's instructions. For the avoidance of doubt nothing in these General Conditions of Contract is intended to confer on the Seller any Intellectual Property Rights in the drawings or data, and their creation constitutes development as set out in Clause 18.3.

## 19. SOFTWARE

19.1 The Seller shall be responsible for providing in accordance with the Contract, all software; firmware and associated documentation where:-

19.1.1 the Goods comprise of and/or include computer hardware

and/or

- 19.1.2 the software and associated documentation is necessary for the satisfactory operation of the Goods or the use of the Services and/or
- 19.1.3 where the provision of such software and associated documentation is specified in the Purchase Order and/or in any Attachment.

For the purposes of clarification any reference to software in this Clause shall be deemed to include and apply to any firmware provided and/or to be provided under the provisions of the Contract.

19.2 Where the provision of the software is not subject to separate licence arrangements:-

- 19.2.1 the Seller hereby grants to the University a perpetual right to use the software (whether modified as hereinafter provided or not) on the Goods or in conjunction with the Services as the case may be;
- 19.2.2 the Seller will provide the software in both object code and source code;
- 19.2.3 the University shall in perpetuity have the right to modify or add to any of the software without reference or obligation to the Seller;
- 19.2.4 all Intellectual Property Rights of the Seller in the software shall remain vested in the Seller;
- 19.2.5 the University shall own the Intellectual Property Rights in any modifications or additions made to the software, but shall in no case acquire the Intellectual Property Rights in the software itself;
- 19.2.6 the University shall not assign or sub-licence to any third party any right to use the software or any translation, compilation, adaptation, enhancement or any other version of the software, without the prior written consent of the Seller, but the University shall have the right to transfer the software to a third party without reference to, or prior written consent of the Seller, in the event that the University sells and/or transfers ownership of the Goods or any part of the Goods to a third party;
- 19.2.7 the University shall only make so many copies of the software as are reasonably necessary for operational security and use.

19.3 Where the Seller provides third party software in accordance with the Contract or otherwise in order to enable the Seller to meet its obligations under the Contract, the Seller shall either:-

- 19.3.1 procure for the University a non-exclusive, perpetual and irrevocable licence to use the software under a separate licence agreement, or
- 19.3.2 grant to the University a sub-licence to use the third party software under a separate licence agreement.

19.4 The Seller hereby warrants that it has the right to grant to the University the rights in, and the rights to use the software and any third party software as set out in these General Conditions of Contract.

## 20. STANDARD OF PERFORMANCE

20.1 The Seller shall ensure, and undertakes to ensure that the Goods and/or the Installation maintains the standard of performance specified and/or achieved that are either:-

- 20.1.1 in the Manufacturer's published specification for the Goods, or
- 20.1.2 in the Specification, or
- 20.1.3 in the Purchase Order or in any Attachment, or
- 20.1.4 as demonstrated in the Acceptance Tests and accepted by the University, or
- 20.1.5 any combination of the above.

for either the period of the maintenance contract if the Goods and/or the Installation are to be maintained by the Seller, or the Warranty Period if the Goods are not to be maintained by the Seller.

20.2 If the University claims that the Goods and/or Services and/or Installation or any part thereof, are not achieving and maintaining the standard of performance specified in the Contract and the Seller wishes to dispute that claim, then, notwithstanding prior acceptance of the Goods and/or

Services and/or Installation in accordance with Clauses 15 and 16 hereof, it shall be for the Seller to undertake at its own expense all necessary investigations to disprove the University's claims, or to prove that such failure to maintain requisite standards is due directly to the fault or failure of the University.

## 21. INDEMNITY & INSURANCE

21.1 The Seller will indemnify and keep the University indemnified fully in respect of and in connection with:-

- 21.1.1 all loss and/or expense which results during proper use directly from defective materials, goods, workmanship or design supplied by the Seller; and
- 21.1.2 all loss and/or expense, and all actions, claims, demands, costs and expenses incurred by or made against the University which arises from the Installation, and/or any Services provided and/or advice given or anything done or omitted to be done under, or in connection with, the Contract by the Seller; and
- 21.1.3 all and any actions, claims, demands or costs in respect of the death or injury to any person arising from defective materials, Goods, workmanship or design, or by reason of the Seller's negligence, or any act or omission on the part of the Seller's employees, sub-contractors, or agents in connection with the Contract; and
- 21.1.4 any damage to the University's property (including any materials, tools or patterns sent to the Seller for any purpose).

21.2 The Seller must take out and maintain insurance adequate to cover the risks set out in this Clause 21 and its liabilities under the Contract and in any event, shall take out and maintain:

- 21.2.1 Product Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) or as otherwise shown on the face of the Purchase Order and/or in any Attachment for any one, or series of claims that may arise; and
- 21.2.2 Professional Indemnity Insurance coverage for the period from the date of this Contract, and at least until the expiry of the period set out in any Attachment (or in the absence of any period being stated in the Attachment a period of six (6) years), of not less than two million pounds sterling (£2,000,000) or as otherwise shown on the face of the Purchase Order and/or in any Attachment for any one, or series of claims that may arise; and
- 21.2.3 Public Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) or as otherwise shown on the face of the Purchase Order and/or in any Attachment for any one, or series of claims that may arise.

The Seller will take out and maintain such insurances as set out in the Contract with a reputable insurance company, and shall, on the request of the University, provide evidence of the insurance policy or policies and of payment of the premiums.

## 22. ASSIGNATION AND SUB-CONTRACTING

- 22.1 The Seller shall not, without first obtaining the written consent of the University, sub-contract the Contract or any part thereof, or make any subcontract with any person or persons for the execution of any part of the Contract, but the restrictions contained in this Clause shall not apply to the supply of materials or minor details, nor to any part of the Contract for which a sub-contractor is named in the Purchase Order or any Attachment.
- 22.2 In circumstances where the University gives written consent to the Seller to assign or sub-contract specific parts of the Contract, such written consent shall not relieve the Seller from any liability or obligations under the Contract, and the Seller shall be responsible for the acts, defaults or neglects of its sub-contractor, and the sub-contractors agents, servants or personnel as fully as if they were the acts, defaults or neglects of the Seller. When requested by the University the Seller will provide a copy of any sub-contract documentation at no charge.
- 22.3 The University may by written notice to the Seller assign the benefits of the Contract, and if required by the University, the Seller will execute any novation agreement necessary to transfer its obligations under the Contract.

## 23. PAYMENT

- 23.1 Provided the Goods and/or Services have been properly Delivered and Installed; are compliant with the requirements of the Contract and have been accepted by the University in accordance with the Contract, the Seller shall be entitled to claim payment of the Price or the percentage of the Price, stated on the Purchase Order or in any Attachment. Payment

shall be due thirty (30) days from the date of the invoice, or the date of receipt by the University of correct invoice documentation, whichever is the later.

- 23.2 Value Added Tax, where applicable, must be shown separately on all invoices.
- 23.3 Payment may be delayed but no prompt discount shall be forfeited by the University, if the Seller fails to mark the University's Purchase Order number on the consignment, package packing notes, invoices, monthly statements and all other correspondence.
- 23.4 Any payment made shall be without prejudice to the University's rights should the Goods or Services and/or Installation prove unsatisfactory or not in accordance with the Contract.
- 23.5 If at any time there shall be any defect due to the fault of the Seller in or affecting any part or portion of the Goods and/or the Installation and/or Services in respect of which such payment is claimed, the University shall have the right to retain the whole of such payment, provided that in the event of such defect being of a minor character, and not such as to affect the use of the Goods and/or the Installation and/or Services, or the said part thereof for the purpose intended without serious risk, the University shall not retain a greater sum than represents the cost of making good the said defect. Any sums retained by the University under this Clause shall be paid to the Seller upon the defect being made good, subject to the provisions of Clause 23.1 above.
- 23.6 In circumstances where the University exercises its rights under the provisions of Clause 14 of these Conditions, and makes a claim in respect of the Delivery and/or the Installation or any part thereof being subject to a delay due to the fault of the Seller, the University reserves the right to deduct the appropriate percentage of the Price as agreed and detailed on the Purchase Order or any Attachment from the payment falling due upon the completion of the Delivery and/or Installation or specific part thereof.
- 23.7 Each invoice shall show the prices attributable to each item of Goods and Services and shall be in sufficient detail to enable the University to identify and assess the amounts claimed. The Seller undertakes to supply such other particulars of costings as the University may require and to permit these to be verified by inspection of books, accounts and other documents and records.
- 23.8 The Seller shall have the right to charge the University interest on any invoices that are not in dispute and are overdue for payment. The rate of interest shall be 2% over the official dealing rate of the Bank of England but shall otherwise be calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, as amended by the Late Payment of Commercial Debts (Scotland) Regulations 2002.

#### 24. RECOVERY OF SUMS DUE

- 24.1 Whenever under a Contract any sum of money shall be recoverable from, or payable by, the Seller, the same may be deducted from any sum then due or which at any time thereafter may become due to the Seller under the Contract, or under any other contract with the University. Exercise by the University of its rights under this Clause, shall be without prejudice to any other rights or remedies available to the University under the Contract.

#### 25. WARRANTY

- 25.1 The Seller shall be responsible for making good at its own expense on the Site, and within the time scales specified in Clauses 25.4 and/or 25.5, any defect in or damage to any of the Goods and/or output of the Services provided as described in Clause 25.3 which may develop during the Warranty Period.
- 25.2 Where the Goods are to be utilised immediately, the Warranty Period shall be 12 months from the Acceptance Date and otherwise the Warranty Period shall be 18 months from the Acceptance Date.
- 25.3 Defects covered by this warranty include any failure of the Goods to comply with the Specification and/or fulfil the functions or meet the level of performance specified in the Contract and accepted by the University by the issue of an Acceptance Certificate or otherwise, which arises from:-
- 25.3.1 defective materials, including software, firmware, workmanship or design (other than a design furnished or specified by the University for which the Seller has disclaimed responsibility in writing within a reasonable time after the receipt of the University's instructions); or,
- 25.3.2 any act or omission of the Seller done or omitted during the Warranty Period.
- 25.4 For the purposes of clarification, where the Goods and/or the Installation comprises, or includes as part of the provision, computer hardware, (or it

is specified in the Attachment that the following provision shall apply to the Goods and/or the Installation or any specific items of Goods and/or the Installation) in the event that the Goods and/or the Installation, or any part thereof, shall fail to fulfil the functions or meet the level of performance specified in the Contract within the period of thirty (30) elapsed days from the date of Delivery and/or Acceptance, whichever is the later, the Seller shall, unless otherwise agreed in writing by the University, be obliged to replace the Goods and/or the affected part of Installation with Goods and/or the part of Installation of the same or substantially equal quality without degrading the functional and/or performance specifications and/or standards of the Goods and/or the Installation within a period of two (2) working days of the receipt of the University's notification of the fault or failure. Such obligation shall be without prejudice to any other rights that may accrue to the University and/or other obligations that may accrue to the Seller under the Contract. Such Goods and/or parts of the Installation so replaced shall be held on, and removed from, the University's Site and returned to the Seller at the Seller's sole risk and expense, irrespective of whether such Goods and/or parts of the Installation are removed and returned by the University or by the Seller.

- 25.5 The Seller must respond within a maximum of 8 working hours or such other period as specified in the Purchase Order or any Attachment to a request for service under the provisions of the Warranty Service, and must, wherever possible effect a repair within a maximum of a further 8 working hours.
- 25.6 If any such damage or defect cannot be remedied within the time scale detailed in Clause 25.4 and/or 25.5 above, or the Seller fails to respond and remedy the damage or defect within a reasonable time, the University may proceed to engage the services of a third party to provide the Warranty Service. Any Warranty Service so undertaken shall be at the Seller's risk and expense, and any costs incurred by the University shall be for the Seller's account. Should the University exercise its rights under this Clause, the utilisation of a third party services shall not affect or invalidate the Warranty provisions, or relieve the Seller of its obligations to provide the Warranty Service for the remainder of the Warranty Period, nor the ability of the University to enter into a maintenance agreement with the Seller, and the Seller shall be responsible for meeting its obligations thereafter. Should the University exercise its rights under this Clause 25.6, this shall be without prejudice to any other rights which the University may have against the Seller in respect of the Seller failing to remedy such defect or damage.
- 25.7 Where a defect involves a fault inherent in the design of the Goods and/or specification of Services provided, or any part thereof, the Seller shall, at its own expense, promptly carry out such re-design as may be necessary to prevent a recurrence of the defect, and upon completion shall rectify the fault in the Goods and/or standard of the Services provided. Any such re-design or re-specification shall be accomplished in such a manner as to ensure that the performance and operation of the Goods and/or Services is not adversely affected by virtue of such re-design and/or re-specification from the standard as accepted by the University in accordance with these General Conditions of Contract.
- 25.8 The provisions of this Clause 25 shall not apply to any defect or damage which arises or develops as a result of any alteration, addition or attachment to the Goods where:-
- 25.8.1 the Seller has published by means of publication in its, or the Manufacturer's, Specifications, a notification stating that the alteration, addition or attachment will degrade the standard of performance of the Goods and/or invalidate the warranty;
- 25.8.2 the Seller has otherwise notified the University in writing that a specific alteration, addition or attachment will adversely affect the standards of performance of the Goods and/or invalidate the warranty;
- 25.8.3 the warranty is invalidated by a negligent act or omission of the University, provided always that it shall be for the Seller to prove that any defect or damage has been caused by the alteration, addition or attachment. Save as set out above, the University shall have the right to make any alteration and/or addition and/or attachment to the Goods, whether such alteration, addition and/or attachment is made by employees of the University, by the Seller and/or by an appropriately qualified third party source, without reference to the Seller and the Seller shall not be relieved of any of its obligations to provide Warranty Services in accordance with this Clause 25.
- 25.9 All services under the provision of this warranty shall be provided free of all charges, and shall be carried out on the Site. Goods shall not be removed from the Site for the provision of Warranty Services without the permission of the University.
- 25.10 In circumstances where Goods are authorised to be removed from the Site, the Goods shall at all times remain the property of the University, but the risk inherent in the Goods shall pass to the Seller from the time the Goods are removed from their normal operating environment until

they are returned and, where appropriate, reinstalled into the same operating environment, or any other operating environment designated by the University; appropriate acceptance tests have been concluded where necessary, and acceptance documentation has been signed by the University.

25.11 The Seller shall be solely liable to rectify any loss or damage howsoever caused prior to such acceptance as a matter of urgency and, in any case, within a time scale to be agreed by the parties at the appropriate time.

25.12 Where Goods are held at the Seller's site the Goods must be readily identifiable as the property of the University and the Seller must keep appropriate records thereof.

25.13 Should the Seller be affected by any incidents such as bankruptcy or liquidation the Seller must identify such Goods to the Receiver, etc. as the property of the University.

25.14 Neither this Clause nor Clause 27 is intended to limit any statutory rights which may accrue to the University and this Clause 25 and Clause 27 are in addition to any standard warranty offered by the Seller or the Manufacturer. In the event of any conflict between the terms of any standard warranty offered or provided by the Seller and the provisions set out in this Clause 25 and Clause 27, the provisions of Clauses 25 and 27 shall take precedence.

## 26. LOAN EQUIPMENT

26.1 In circumstances where Goods or any specific components or parts thereof are removed from the Site in order to provide Warranty Services in accordance with Clause 25 above, or for any other reason as may be agreed by the parties, the Seller shall, upon the request of the University, be required to provide Goods of an identical or nearest equivalent specification on a free loan basis for the entire period of time for which the original Goods and/or specific components or parts thereof are held on the Seller's site.

26.2 Any Goods supplied on loan in accordance with this Clause will remain the property of the Seller but will be held on site at the University's risk. The risk shall return to the Seller immediately the Goods are removed from use by the University and replaced by the original Goods. The University undertakes to adequately insure the Goods against loss or damage whilst they are in use on the University's Site, but will not accept any liability for failure or breakdown of the Goods due to wear and tear or faulty manufacture. The Seller must repair or replace Goods which are loaned to the University and subsequently develop a fault within the timescales specified in Clause 25.5.

## 27. REPLACEMENT GOODS AND/OR SERVICES

27.1 In the event that all or any of the Goods and/or Services supplied in accordance with the Contract shall consistently fail to achieve and maintain the standards of performance either:-

27.1.1 as specified in the published specification for the Goods and/or Services as issued by the Manufacturer, and/or the service provider and/or the Seller;

27.1.2 as set out in the Specification;

27.1.3 as specified in the Purchase Order or any Attachment;

27.1.4 as demonstrated in the Acceptance Tests and/or accepted in writing by the University;

27.1.5 any combination of the above, and provided that the Goods and/or the Installation and/or any physical output of the Services are being used by the University in accordance with the Installation and/or operating instructions:-

27.1.6 issued and supplied by the Seller;

27.1.7 issued and/or published by the Manufacturer and/or the service provider;

27.1.8 where no instructions are provided, in accordance with generally accepted good practice appropriate to the Goods and/or Services;

27.1.9 any combination of the above, the Seller hereby warrants for the Warranty Period that the Goods and/or Services, or specific portion(s) thereof affected by such circumstances shall be replaced with goods and/or services of equal or nearest equivalent higher specification forthwith and free of all charges. This warranty and any services provided in fulfillment of it are not intended to remove any rights which the University may have under Clause 25.

27.2 For the avoidance of doubt, "consistently fail" shall be defined as the

Goods requiring a minimum of four (4) visits to provide service repairs, or a minimum of four (4) return visits to provide the Services to satisfactory standards, during the Warranty Period.

27.3 If the Goods and/or Services and/or the Installation are supplied without warranty, the provisions of this Clause 27 shall not apply unless the University enters into a maintenance agreement with the Seller (either under the provisions of this Contract or subject to the provisions of a separate contract between the parties) which commences within thirty (30) days, or such other period as maybe agreed between the parties, of the Acceptance Date. The rights and obligations of the parties set out in this Clause 27 shall apply for the first year (or such other period as maybe agreed by the parties and set out in an Attachment) of the valid term of such maintenance agreement.

27.4 Service calls which the Seller can prove as having been made necessary due to any negligent act or omission of the University, or which are defined as return calls to replace parts shall be excluded from the total number of calls referred to in Clause 27.2.

27.5 If the Seller fails to complete warranty repairs to the Goods on the University's Site such that the Goods are repaired and operating to the standards of performance as defined in Clause 27.1, or removes the Goods from the Site to undertake warranty repairs, and fails to return the Goods repaired and operating to the standards of performance as defined in Clause 27.1 within a maximum period of ten (10) working days, and/or fails to provide an adequate service within the same period, from the date of receiving the initial request from the University, each such failure shall be deemed to be one service call added to the cumulative total referred to in Clause 27.2 for each ten (10) working day period.

27.6 Replacement Goods and/or Services supplied by the Seller under this Clause 27 shall be supplied in accordance with these General Conditions of Contract. The Goods and/or Services shall be supplied with a full Warranty Service as defined in, and for the Warranty Period specified in Clause 25.2 (except that the period will commence on the date that the replacement Goods and/or Services are accepted by the University). The University's rights to require the Seller to replace Goods and/or Services in accordance with this Clause shall apply to any replacement Goods and/or Services as if they were the Goods and/or Services originally supplied.

## 28. SAFETY

28.1 In accordance with the requirements of the Health & Safety at Work Act 1974 and any re-enactment or amendment thereof, any safety precautions required for the handling of the Goods are to be clearly indicated on each consignment.

28.2 Hazardous Goods must be marked in accordance with Chemicals, (Hazard Information and Packaging for Supply) Regulations (CHIP2) 1994 and any subsequent amendments thereto. Risk and safety phrases must be in English.

28.3 Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Seller shall observe the requirements of U.K. and International Agreements relating to the packing, labeling and carriage of hazardous goods.

28.4 Hazard data sheets 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 1974, and the Health and Safety Executive Guidance Note L130 as amended or replaced and in force as at the date of Delivery.

## 29. STATUTORY AND OTHER REGULATIONS

29.1 The Seller shall in all matters arising in the performance of the Contract conform with all Acts of Parliament and with all orders, regulations and bye-laws made with statutory authority by Government Departments or by local or other authorities that shall be applicable to the Contract; the Seller shall also observe through its Personnel any rules applicable to the Site. The University shall on request afford all reasonable assistance to the Seller in obtaining information as to local conditions. The Seller shall not in the performance of the Contract in any manner endanger the safety or unlawfully interfere with the convenience of the public. The cost to the Seller in meeting its requirements of this Clause shall be included in the Price, except as provided under Clause 29.4 hereof.

29.2 The Seller shall give the University such prior written notice as the University may require of the Delivery of any Goods having a toxic hazard or other hazard to the safety or health of persons or property, identifying those hazards and giving full details of any precautions to be taken by the University on the delivery of such Goods and their subsequent storage or handling, and shall at all times observe its obligations under Clause 28 of this Contract.

29.3 Without prejudice to the foregoing, the Seller shall in all matters arising in the performance of the Contract conform, and provide all such assistance

to the University in order that the University is able to conform, and maintain conformance, with all and any environmental legislation and laws (including, without limitation, the Environmental Protection Act 1990 and the Waste Electrical Equipment Directive and the regulations made thereunder and any statutory amendments or reenactments made thereto) applicable to the Goods and/or Services and/or the Contract (and including, without limitation, as maybe applicable to the disposal of the Goods and/or of any waste products created by the use of the Goods). In addition the Seller shall comply and conform, and maintain compliance and/or conformance with, all and any of the policies and procedures used by the University in maintaining its commitment to, and the delivery of, its own environmental sustainability strategies and policies (including, without limitation, those which ensure that the University conforms and complies with any applicable environmental legislation and laws) which are made known to the Seller.

- 29.4 In the event that either party incurs costs which it would not otherwise have incurred and which are caused by the other party's failure to comply with any law or any order, regulation or byelaw having the force of law, the amount of such costs shall be reimbursed by the other party.

### 30. WAIVER

- 30.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any of these General Conditions of Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract.

### 31. CONFIDENTIALITY

- 31.1 Without prejudice to Clause 18.4 of this Contract, each party ('the Receiving Party') shall keep confidential all information of the other party ('the Disclosing Party') obtained under or in connection with the Contract, whether such information (which shall include, but not be limited to, information obtained by the Seller when visiting the Site) is related to the Contract or otherwise, and shall not divulge the same to any third party without the written consent of the Disclosing Party, and shall use it only for the purposes of the Contract.
- 31.2 The provisions of this Clause shall not apply to any information if such information is:-
- 31.2.1 in the public domain, other than through the fault of the Receiving Party, or
- 31.2.2 in the possession of the Receiving Party before its disclosure by Disclosing Party; or
- 31.2.3 obtained from a third party who is free to divulge the information concerned without a continuing restriction on its disclosure; or
- 31.2.4 independently developed by the Receiving Party.
- 31.3 Neither party shall be in breach of Clause 31.1 to the extent that it is required to disclose any information of the other pursuant to a statutory, legal or parliamentary obligation placed on the party making the disclosure including any requirement for disclosure under the Freedom of Information (Scotland) Act 2002 or any subordinate legislation made under that Act or under the Environmental Information (Scotland) Regulations 2004.
- 31.4 The Seller and the University shall divulge the information of the other party only to those employees, including the agents and/or employees of any authorised sub-contractor in accordance with Clause 31.6 below, who are directly involved in the Contract and/or the Installation and/or use of the Goods and/or provision of the Services, and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.
- 31.5 Where Goods, or specific parts thereof are deemed to be beyond economic repair and/or the Seller elects to replace parts under the provisions of the Warranty Service in accordance with Clause 25, and the Goods and/or parts thereof have, or are likely to have, data stored upon them, the Seller must erase all data from them and, if requested by the University, provide written certification to confirm erasure. The University reserves the right to request that relevant Goods, and/or specific parts or components thereof are returned to the University for disposal. Such requests shall be made by the University in writing.
- 31.6 In circumstances where the Seller is an agent of or re-seller for the Manufacturer, the Seller must obtain a written policy statement regarding the disposal of Goods upon which data is stored. Such a statement so submitted shall not excuse the Seller from its obligations under this Clause 31.
- 31.7 The Seller must ensure that all Personnel are bound by the requirements of this Clause, and shall be held responsible for any breaches of confidentiality committed by them.

- 31.8 The provisions of this Clause shall continue in perpetuity, notwithstanding the cancellation, termination or discharge of the Contract.

- 31.9 The Seller acknowledges that the University is subject to the Freedom of Information (Scotland) Act 2002 (and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation) and the Environmental Information (Scotland) Regulations 2004 (together "Freedom of Information Legislation") and will assist and co-operate with the University (at the Seller's expense) to enable the University to comply with its obligations under Freedom of Information Legislation if requested to do so by the University.

- 31.10 Without limiting the generality of Clause 31.9, where the Seller holds information for and on behalf of the University, and the University receives a third party request under Freedom of Information Legislation in respect of the information the Seller holds on behalf of the University, and in the University's sole and absolute judgement, the University is required to provide the requested information under the provisions of Freedom of Information Legislation, the Seller will fully co-operate and provide all assistance requested and/or required by the University in order to enable the University to respond to such request within the timescales provided and set out in the Freedom of Information Legislation.

### 32. CONSUMABLE SUPPLIES

- 32.1 The University reserves the right to procure consumable supplies to be used on or with the Goods, and suitable for the Goods from the Seller or such other source as the University may deem appropriate. Such procurement of consumables from a source other than the Seller shall not invalidate the rights of the University under these General Conditions of Contract, and shall in no way affect the provisions in respect of warranty claims made in accordance with Clause 25, nor the University's rights under Clause 27, provided that the consumables utilised meet the minimum standards as published by the Seller or the Manufacturer, or where no published standards are available, the standards generally accepted as being appropriate to the consumable supplies for use on or with the Goods concerned.
- 32.2 In the event that the Seller shall claim that the use of specific consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to the Seller of meeting its obligations to provide Warranty Services in accordance with Clause 25 and/or replacement goods in accordance with Clause 27 of this Contract, it shall be for the Seller to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing the Seller's costs as set out above. If the Seller proves that the consumables do not meet the requisite minimum standards the University shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

### 33. MAINTENANCE

- 33.1 If required by the University before the end of the Warranty Period, the Seller shall enter into a separate contract for the maintenance of the Goods.
- 33.2 If a maintenance contract commences before the end of the Warranty Period the maintenance charges during the Warranty Period shall reflect the Seller's obligations under Clause 25 of this Contract.

### 34. SPARES

- 34.1 Where appropriate to the Goods supplied in accordance with this Contract, the Seller shall make available to the University, or any nominated third party maintenance source, on request; with reasonable dispatch and at reasonable prices, all spares and replacement parts as the University, or nominated third party maintenance source, shall require for the Goods.
- 34.2 The Seller shall maintain a supply of such spares or replacement parts for a period of seven (7) years from the date of Delivery or the Acceptance Date, whichever is the later.
- 34.3 Such spares or replacement parts shall be required to be fully compatible with, and maintain as a minimum the same levels of performance as, the Goods originally supplied, but need not be identical to those items. The warranty in Clause 25 shall apply to the spares or replacement parts as if they were part of the original Goods.
- 34.4 If during this period the Seller, or its sub-contractor intend to discontinue the manufacture of spares or replacement parts for the Goods the Seller shall forthwith give notice to the University of such intention, and advise the University of any third party source from which the spares or replacement parts will be available, or to which third party source the Seller intends to provide drawings, patterns, specifications and other information.

34.5 If during the stipulated period of seven (7) years the Seller or its sub-contractor either:

34.5.1 fails to make available to the University, or any nominated third party maintenance service provider, with reasonable despatch, at reasonable prices all such spares or replacement parts as the University or nominated third party maintenance source shall require for the Goods; or

34.5.2 becomes insolvent or has a receiving order made against them, or commences to be wound up (not being a member's winding up for the purposes of reconstruction), then the Seller shall so far as it is legally entitled to do so, and if so required by the University, as soon as practicable, deliver to the University or its nominated third party maintenance source, free of charge such drawings, patterns, specifications and other information as referred to in Clause 34.4, and which the University, or its nominated third party source, shall be entitled to retain for such time only as necessary for the exercise by the University of its rights under this Clause, and which, if the Seller so requires, shall be returned by the University to the Seller at the University's cost and expense.

## 35. ATTACHMENTS TO THE GOODS

35.1 The University shall have the right to attach to, or install into or onto the Goods any goods (including but not limited to software) which the University considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by the University. If the University attaches or installs goods then this shall not have the effect of degrading the performance of the Goods, and shall not relieve the Seller from meeting its obligations to provide Warranty Services in accordance with Clause 25 or replacement goods in accordance with Clause 27 hereof provided that:-

35.1.1 the goods attached or installed are not specified in any of the Seller's and/or the Manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating the University's rights under Clauses 25 and 27 as aforesaid;

35.1.2 the Seller has not otherwise notified the University in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate the University's rights under Clauses 25 and 27 as aforesaid; and

35.1.3 the goods have been attached or installed in accordance with the published instructions of the supplier of the goods concerned.

35.2 In the event that the attachments and/or installation is made by the University, and the Seller can prove that such attachment or installation is adversely affecting the standard of performance of the Goods or otherwise increasing the frequency of the provision of Warranty Services, then the Seller shall be entitled to be reimbursed any associated costs which the Seller can demonstrate as being reasonably and necessarily incurred in providing Warranty Services or returning the Goods to the normal standards of performance in accordance with this Contract as a direct result of the attachment or installation being made by the University (other than where such attachment or installation has been with the approval of the Seller).

## 36. OPERATING MANUALS

36.1 The Seller shall supply to the University all operating manuals and other documentation necessary for the satisfactory operation of the Goods, and in any event all documentation as specified in the Purchase Order or any Attachment. If, after the Acceptance Date, the operating manuals and documentation need updating or replacing the Seller shall be responsible for notifying the University of the availability of such updates or replacements, and shall supply them at reasonable prices upon receipt of appropriate Purchase Order documentation. The Seller shall provide the operating manuals and other documentation in the media format in which they are available at the appropriate time.

## 37. DISPUTE RESOLUTION

37.1 The University and the Seller shall in good faith use all reasonable endeavours to resolve any dispute or difference that may arise between them in respect of the construction, meaning and effect of these General Conditions of Contract or any matter arising out of or in connection with the Contract in accordance with the dispute resolution procedure set out in the Attachment. If either party refuses to acknowledge the existence of a dispute notified by the other party then the first party may proceed to exercise its rights under Clause 45.

## 38. PROPERTY AND RISK

38.1 Title to the Goods shall pass to the University at the time of payment,

provided that such passing shall not prejudice either the University's right to reject for non-conformity with Specification and shall not prejudice any other rights that the University may have under the Contract. However, where advance or progress payments are made, title but not risk shall pass to the University as soon as items are allocated by the Seller to the Contract. All items so allocated shall be adequately marked and recorded as being the property of the University, and where such items are stored on the Seller's site, held in a separate bonded area suitable for such storage purposes.

38.2 Where advance or progress payments are to be made the University shall have the right to require that a Banker's Guarantee/Performance Bond in the University's favour, and in a form and standard and incorporating wording that is acceptable to the University, shall be provided in the full value of any such advance and/or progress payments made or to be made. Such requirement shall be stated on the Purchase Order or in the Attachment to the Contract, and any costs incurred by the Seller of the provision of such Banker's Guarantee/Performance Bond shall be for the Seller's account and deemed to be included in the Price.

38.3 Unless otherwise stated in an Attachment, risk in the Goods and/or any parts, stages or portions of the Installation shall pass to the University upon Delivery of the Goods and/or any parts, stages or portions of the Installation to the University.

## 39. FORCE MAJEURE AND EXTENSION OF TIME

39.1 If, by any reason of any act or default of the University or any other circumstance which is beyond the reasonable control of the Seller arising after the date of the Contract (which shall include, but not be limited to, acts of God, perils of the sea or air, flood drought, explosion, sabotage, accident, embargo, war, riot, civil commotion, including acts of local government or parliamentary authority and/or labour disputes (other than labour disputes, strikes or lock outs involving the Seller's own Personnel and workforce and/or staff employed by the Seller), the Seller has been delayed or impeded in the completion of the Contract, and provided that the Seller shall immediately have given to the University notice in writing of its claim for an extension of time, the University shall on receipt of such notice grant the Seller from time to time in writing either prospectively or retrospectively such extension of the time for the completion of the Contract as may be reasonable, but which shall not, unless otherwise agreed between the parties in writing, exceed sixty (60) days after the date of the Seller's notice to the University as set out above. This Clause only applies if:

39.1.1 the Seller shall, immediately upon becoming aware that any such delay has been or is likely to be caused, give notice in writing to the University specifying the circumstances causing or likely to cause the delay and the actual or estimated extent of the delay caused or likely to cause the delay;

39.1.2 the Seller could not reasonably be expected to have foreseen at the date of the Contract that a delay would, or was likely to, occur;

39.1.3 the Seller uses its best endeavours to prevent any delay being caused and to minimise any such delay to the satisfaction of the University; and

39.1.4 such delay is not attributable to any negligence, default or improper conduct of the Seller.

39.2 If the University has granted the Seller an extension of time as set out in Clause 39.1, and the Contract is not completed within the extended period, the University may by giving notice to the Seller terminate the Contract with immediate effect. Termination of the Contract under this Clause 39 shall be without prejudice to any rights which may have accrued to the University to the effective date of such termination.

## 40.1 COMPLIANCE WITH LAW

40.1 The Seller shall and shall procure that persons associated with it or other persons who are involved in any way with this Contract shall:

a) comply with all applicable laws, statutes and regulations (including but not limited to:-

(i) anti-bribery and anti-corruption legislation as specifically outlined in the Bribery Act 2010 ("**Relevant Requirements**"); and

(ii) anti-discrimination legislation as specifically outlined in the Equality Act 2010;

b) 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;

- c) comply with the University's Anti-corruption Policy currently in force and any update thereof (annexed to this Contract and a copy of which can be found at [http://www.doccs.csg.ed.ac.uk/HumanResources/Policies/Bribery-Anti\\_Bribery\\_and\\_Corruption\\_Policy.pdf](http://www.doccs.csg.ed.ac.uk/HumanResources/Policies/Bribery-Anti_Bribery_and_Corruption_Policy.pdf) ("Relevant Policies");
- d) maintain in place throughout the term of this Contract adequate policies and procedures under the Bribery Act 2010 and inform the University immediately (in writing) in the case of any breach, investigation of prosecution thereunder;
- e) promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Seller in connection with the performance of this Contract; and
- f) immediately notify the University (in writing) if a foreign public official becomes an officer or employee of the Seller or acquires a direct or indirect interest in the Seller (and the Seller warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Contract);

40.2 For the purpose of this clause 40, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the avoidance of doubt, a breach of any of the terms of this clause 40 shall be a material breach in terms of the Contract;

40.3 The Seller shall indemnify the University against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the University as a result of any breach of this clause 40 by the Seller or any persons associated with it in connection with the performance of this Contract.

40.4 Any breach of this Clause by the Seller or by anyone employed by the Seller or acting on behalf of the Seller (whether with or without the knowledge of the Seller) or the commission of any offence by the Seller or by anyone employed by the Seller or acting on the Seller's behalf under the or the Bribery Act 2010 in relation to this Contract or any other contract with the University, shall entitle the University to terminate the Contract and recover from the Seller the amount of any loss resulting from such termination.

40.5 Where the Contract has been terminated under Clause 40.4 above, the powers given by Clause 14 (Delays by the Seller) and Clause 17 (Termination) shall apply as if there has been a failure to complete the Contract.

40.6 In any dispute, difference or question arising in respect of:-

40.6.1 the interpretation of this Clause 40 (except so far as the same may relate to the amount recoverable from the Seller under Clause 40.2 above in respect of any loss resulting from such termination of the Contract); or

40.6.2 the right of University to terminate and/or determine the Contract; or

40.6.3 the amount of value of any such gift, consideration or commission;

the decision of University shall be final and conclusive.

#### 41. SEVERABILITY

41.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event that a provision that is fundamental to the purpose, fulfillment and/or performance of the Contract is held invalid, the University and the Seller shall immediately commence good faith negotiations to remedy such invalidity.

#### 42. EQUAL OPPORTUNITIES

42.1 In accordance with its responsibilities to eliminate unlawful discrimination, promote equal opportunities and promote good relations between people of different racial groups (including but not limited to the provisions of the Equality Act 2010) the University requires the Seller and the Seller's sub-contractors to comply with the terms and conditions set out in this Clause 42.

42.2 All Personnel employed by the Seller for the purpose of performing the Contract must be fully trained, suitably qualified and experienced, and shall fulfill their duties in a professional, ethical manner, consistent with the University's commitment to equal opportunities and race equality and

the highest standards of behavior.

42.3 The Seller will comply with legislation for the prevention of discrimination on the grounds of disability, race, sex, sexual orientation, age, religion and belief and the promotion of race equality (or as otherwise specified in the Equality Act 2010). The Seller is required where appropriate to provide information to the University on its compliance with legislation and its practices and procedures to prevent unlawful discrimination and to promote race equality and equal opportunities.

42.4 The Seller shall provide such information as the University requires about its policies and practices concerning the prevention of unlawful discrimination and the promotion of equal opportunities and race equality both in terms of employment and customer service.

42.5 The University and Seller shall continue to monitor the performance and objectives of the contract throughout its duration and to make any amendments or changes necessary to the Contract, or its performance or objectives in order further to promote race equality.

42.6 The Seller shall notify the University immediately in writing as soon as it becomes aware of any investigation or proceedings brought against it under the Equality Act 2010 or any other equal opportunities legislation.

42.7 Where any investigation is undertaken by a person or body empowered to conduct such an investigation and/or proceedings are instituted following such an investigation against the Seller or against the University either in connection with the Contract or any Contract awarded to the Seller or generally, the Seller shall, without charge:-

42.7.1 provide any information requested in the timescale allotted;

42.7.2 attend and permit its employees to attend any meetings as required;

42.7.3 allow access to and investigation of any documents or data deemed to be relevant to the investigation;

42.7.4 allow itself and any of its employees to appear as witnesses in any proceedings; and

42.7.5 co-operate fully with the person or body conducting the investigation.

42.8 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Seller, its staff, employees, agents or sub-contractors and where there is a finding against the Seller in any such investigation or proceedings, the Seller shall indemnify the University with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the University during or in connection with any such investigation or proceedings and further indemnify the University for any compensation, damages, costs or other award the University may be ordered or required to pay to a third party.

42.9 If a finding of unlawful discrimination or breach of equal opportunities legislation is made against the Seller or against the University arising from the conduct of the Seller, the University will require the Seller to take immediate remedial steps to prevent further recurrences.

42.10 If the Seller enters into any sub-contract as authorised in this Contract in connection with this Contract, it shall impose obligations on its sub-contractors terms which are identical to those imposed on it in this Clause. The University expects that the Seller will not sub-contract to any business, service or group which has a poor history of discrimination in employment or service delivery. A breach of this Clause will be considered as a fundamental breach of the Contract between the University and the Seller.

42.11 Without prejudice to its remedies set out above, the University may terminate the Contract forthwith and without liability of any kind accruing against the University if notice has been given to the Seller of a substantial or persistent breach of this Clause 42 providing that a reasonable period has been given during which the breach may have been rectified and the Seller has failed to remedy the breach within the stated period.

#### 43. DATA PROTECTION

43.1 The Seller shall comply with the Data Protection Act 1998, the regulations made thereunder and any statutory amendments or reenactments made thereof (together the "Act") in its performance of the Contract, and acknowledges and agrees that it shall be acting as a data processor for the University as defined by the Act, in respect of any Personal Data Processed by the Seller on behalf of the University under the Contract.

43.2 The Seller shall ensure that appropriate technical and organisational measures are established against the unauthorised or unlawful Processing of Personal Data and against loss or destruction of, or damage to, Personal Data Processed by the Seller on behalf of the University.

Such measures shall be appropriate to the nature of the Personal Data Processed by the Seller.

- 43.3 The Seller shall only Process Personal Data on behalf of the University in accordance with the instructions issued by the University from time to time and for no other purpose whatsoever, save as required by law.
- 43.4 The Seller shall keep the Personal Data Processed by the Seller under the Contract safe and confidential, and will ensure that only such of its employees who may be required by the Seller to assist it in meeting its obligations under the Contract shall have access to the Personal Data.
- 43.5 The Seller shall adopt and maintain a written security policy in relation to Personal Data Processed by it on behalf of the University and shall procure that all of its employees are aware of and abide by all of the provisions of such policy and the provisions of the Contract, in particular this Clause 43, and shall make such policy available for inspection on request by the University.
- 43.6 Where data is taken away from the University for Processing by the Seller, the Seller shall, at the times agreed between the parties and set out in the Contract, and/or on reasonable notice and/or at any time:
- 43.6.1 permit the University's representatives to gain access to the Seller's premises to enable the University to ascertain whether the Seller is complying with Clauses 43.1 to 43.5 inclusive of the Contract;
- 43.6.2 permit the University's representatives to have access to the Personal Data processed by the Seller on behalf of the University, including but not limited to where this is necessary in order to enable the University to respond to a subject access request made under the Act.
- 43.9 The Seller will indemnify the University in full against all losses, claims, costs, expenses or other liabilities awarded against, or incurred by, the University as a result of, or in connection with, any breach of this Clause 43 by the Seller or its Personnel.
- 43.10 On termination or discharge of the Contract the Seller shall return to the University all Personal Data provided to it by the University and/or otherwise acquired by the Seller for the purposes of the provision of the Services under, and/or the performance of the Contract by the Seller.
- 43.11 For the purpose of this Clause 43 "Personal Data" and "Process", "Processing" and "Processed" shall have the meanings given to them in the Data Protection Act 1998.

#### **44. RIGHTS OF THIRD PARTIES**

- 44.1 No person who is not a party to this Contract has any right to prevent the variation or cancellation of any provision of this Contract or its termination, and no person who is not a party to this Contract may enforce any benefit conferred upon them by this Contract, unless this Contract expressly provides otherwise.

#### **45. LAW**

- 45.1 The construction validity and performance of the Contract, shall be governed by the Law of Scotland, and, subject to the provisions of clause 37.1, shall be subject to the exclusive jurisdiction of the Scottish courts.