

**UNIVERSITY OF KENT TERMS AND CONDITIONS
FOR THE PURCHASE OF GOODS AND SERVICES**

1. Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

Agreement	this contract;
Conditions:	these terms and conditions as amended from time to time.
Confidential Information:	all information, whether written or oral (however recorded), provided by the disclosing party to the receiving party and which is known by the receiving party to be confidential, is marked as or stated to be confidential or ought reasonably to be considered by the receiving party to be confidential.
Contract:	the contract between the University and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.
Contractor Personnel (Supplier Personnel):	means all directors, officers, employees, agents, consultants and contractors of the Supplier/Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement
Deliverables:	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
Delivery Location:	has the meaning given in clause 5.2(b).
FOIA:	the Freedom of Information Act 2000.
Goods:	the goods (or any part of them) set out in the Order.
Goods Specification:	any specification for the Goods, including any related plans and drawings, that is agreed in writing by the University and the Supplier.
GDPR :	Means the General Data Protection Regulations, which come into effect on May 25 th 2018
Intellectual Property Rights:	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Law:	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor / Supplier is bound to comply;

Order:	the University's order for the supply of Goods and/or Services, as set out in the University's purchase order form.
Party :	A Party to this agreement
Services:	the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
Service Specification:	the description or specification for Services agreed in writing by the University and the Supplier.
Supplier:	the person or firm from whom the University purchases the Goods and/or Services.
University:	the University of Kent registered in England and Wales by Royal Charter with company number RC000656.
University Materials:	has the meaning set out in clause 6.3(i).
VAT:	value added tax in accordance with the provisions of the Value Added Tax Act 1994.
Working Day:	a day (other than a Saturday or Sunday) in England when banks in London are open for business.

1.2 In these Conditions, unless the context otherwise requires:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a references to a party includes its personal representatives, successors or permitted assigns;
- (c) any obligation on any party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- (d) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation, byelaw or code of practice made under that enactment;
- (e) the word 'including' shall be understood as meaning 'including without limitation;' and
- (f) a reference to **writing** or **written** includes faxes and e-mails.

2. **Basis of Contract**

2.1 The Order constitutes an offer by the University to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.5 The Supplier will take reasonable steps and responsibility to protect itself from fraud, including any third parties impersonating the University to obtain goods or services by deception.

3. **Supply of Goods**

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the University, expressly or by implication, and in this respect the University relies on the Supplier's skill and judgment;
- (c) be new (unless otherwise specified in the Goods Specification) and free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The University shall have the right to inspect and test the Goods at any time before delivery. Acceptance of goods and services may be subject to User Acceptance Testing and failure of this process may result in any delivery being rejected. Such acceptance will not be withheld unreasonably.

4. **Cancellation**

4.1 The University shall have the right to cancel an Order for the Goods, or any part of the Goods, which have not yet been delivered to the University. The Cancellation shall be made in writing. The University shall pay for the Goods which have already been delivered to the University or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt, the University shall not be liable for any loss of anticipated profits or any consequential loss.

4.2 The University reserves the right to cancel an order if the date for delivery has passed and there has not been credible progress in the process of delivery, and / or in a circumstance where there is no reasonable likelihood of a timely delivery should the original and agreed date have passed.

5. **Delivery of Goods**

5.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) if the Supplier requires the University to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

5.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order or, if no such date is specified, then within 30 days of the date of the Order;
- (b) to the University's premises at University of Kent, Canterbury, Kent, CT2 7LR or such other location as is set out in the Order or as instructed by the University before delivery (**Delivery Location**);

- (c) during the University's normal hours of business on a Working Day, or as instructed by the University.
- (d) For the avoidance of doubt the University has locations in Canterbury, Medway, Tonbridge, and internationally at Athens, Brussels, Paris and Rome. Request for delivery to other locations is likely to be fraudulent and it is the responsibility of the supplier to ensure that any delivery address is a valid location for legitimate receipt of the goods.

5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5.4 The Supplier shall not deliver the Goods in instalments without the University's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the University to the remedies set out in clause 7.1.

5.5 Title and risk in the Goods shall pass to the University on completion of delivery.

5.6 It is the responsibility of the Supplier to inform the University at the first opportunity should the targeted and agreed delivery date of any Goods or Services be unachievable and to work with the University to agree the revised Delivery Date.

5.7 The Supplier agrees to ensure that it maintains ownership and title during transit of any Goods, and to provide insurances to compensate for any damage incurred during transportation of these Goods.

5.8 The University is not responsible for any late deliveries caused by any complications from Brexit, including but not limited to, importation difficulties, delays at Border Control, and the deterioration of any goods such as food, perishables, or time-sensitive items, as a result of matters outside of the Universities control. It is the responsibility of the Supplier to ensure that all importation licences and documentation is prepared for smooth transition through any and all borders, controls, checkpoints, and authorities for timely delivery.

6. **Supply of Services**

6.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the University in accordance with the terms of the Contract.

6.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the University.

6.3 In providing the Services, the Supplier shall:

- (a) co-operate with the University in all matters relating to the Services, and comply with all instructions of the University;
- (b) perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the University;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all materials supplied and used in the Services or transferred to the University, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the University's premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the University to the Supplier (**University Materials**) in safe custody at its own risk, maintain the University Materials in good condition until returned to the University, and not dispose or use the University Materials other than in accordance with the University's written instructions or authorisation; and
- (j) not do or omit to do anything which may cause the University to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the University may rely or act on the Services.

7. **University remedies**

7.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the University shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the University in obtaining substitute goods and/or services from a third party;
- (d) where the University has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
- (e) to claim damages for any additional costs, loss or expenses incurred by the University which are in any way attributable to the Supplier's failure to meet such dates.

7.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the University shall have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by the University in obtaining substitute goods from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by the University arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

7.3 If the Supplier has supplied Services that do not conform to the undertakings in clause 6.3 then, without limiting its other rights or remedies, the University shall have one or more of the following rights:

- (a) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (b) recover from the Supplier any costs incurred by the University in obtaining substitute services from a third party; and/or
- (c) where the University has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier.

7.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.5 The University's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

8. **Charges and payment**

8.1 The price for the Goods:

(a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the date of the Order; shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the University. No extra charges shall be effective unless agreed in writing and signed by the University; and

(b) shall not be varied for reason or currency fluctuation, unforeseen circumstances, or any other reason during the period between the Order being accepted and delivery. These will include any attempts to impose price changes and alterations / uplifts as a result of changes in supply chain or suppliers to the Supplier.

(c) Shall be set in Pounds Sterling and at the price/currency exchange rate applicable on the day of Order. Currency changes, fluctuations, exchange rates, and other variations will not be accepted. For clarity, the exchange rate on the date of delivery, invoice submission, or any date, or currency, other than that of the day the Order is placed will not be valid.

8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and / or Services. Unless otherwise agreed in writing by the University, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

8.3 In respect of Goods, the Supplier shall invoice the University on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the University on completion of the Services. Each invoice shall include such supporting information required by the University to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

8.4 In consideration of the supply of Goods and/or Services by the Supplier, the University shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

8.5 All amounts payable by the University under the Contract are exclusive of VAT which shall be charged at the prevailing rate. The University shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier a sum equal to the VAT chargeable in respect of the supply of the Goods and/or Services.

8.6 If a payment of an undisputed amount is not made by the University by due date for payment, then the University shall pay the Supplier interest on the overdue amount at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. This clause shall not apply to payments that the University disputes in good faith.

8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the University to inspect such records at all reasonable times on request.

8.8 The University may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the University against any liability of the University to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

8.9 The imposition of annual price rises, whether linked to any inflationary index or not, is not part of this contract. The price for the delivery of the service is set and fixed for the duration of the initial Contract term.

9. **Assignment and subcontracting**

9.1 The University may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

9.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the University.

10. **Intellectual Property Rights**

10.1 In respect of the Goods and any goods that are transferred to the University as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the University, it will have full and unrestricted rights to sell and transfer all such items to the University.

10.2 The Supplier grants the University a perpetual, royalty free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all Intellectual Property Rights in the Goods or in any materials accompanying the Goods to the extent that it is necessary to fulfil the Supplier's obligations under the Contract or enable the University to use the Goods for their intended purpose.

10.3 The Supplier assigns to the University, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

10.4 The Supplier shall obtain waivers of all moral rights in the products of the Services, including for the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

10.5 The Supplier shall, promptly at the University's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the University may from time to time require for the purpose of securing for the University the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the University in accordance with clause 10.3.

10.6 All University Materials are the exclusive property of the University and shall remain so throughout the term of the Contract.

10.7 All Intellectual Property Rights in the University Materials shall remain the property of the University but the University hereby grants the Supplier a royalty-free, non-exclusive and non-transferrable licence to use such materials as required during the term of the Contract for the sole purpose of enabling the Supplier to perform its obligations under the Contract.

10.8 Use of the University logo and branding on any products produced as a result of any Order or instruction should adhere to the use of the Brand Identity as outlined at : <https://www.kent.ac.uk/brand/guide.html>

11. **Confidentiality, transparency and publicity**

11.1 Subject to clause 11.2, each party shall:

- (a) treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing party; and
- (b) not use or exploit the disclosing party's Confidential Information in any way except for the purposes anticipated under the Contract.

11.2 Notwithstanding clause 11.1, a party may disclose Confidential Information which it receives from the other party:

- (a) where disclosure is required by applicable law or by a court of competent jurisdiction;
- (b) to its auditors or for the purposes of regulatory requirements;
- (c) on a confidential basis, to its professional advisers;
- (d) where the receiving party is the Supplier, to its staff on a need to know basis to enable performance of the Supplier's obligations under the Contract provided that the Supplier shall procure that any staff to whom it discloses Confidential Information pursuant to this clause (d) shall observe the Supplier's confidentiality obligations under the Contract; and

- (e) where the receiving party is the University:
 - (a) on a confidential basis to the employees, agents, consultants and contractors of the University subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the University under this Contract; or
 - (b) in accordance with clause 12.

11.3 The Supplier shall not make any press announcement or publicise the Contract or any part of the Contract in any way, except with the prior written consent of the University.

12. Freedom of information

12.1 The Supplier acknowledges that the University:

- (a) is subject to the requirements of the FOIA and shall provide all necessary assistance and cooperation as is reasonably requested by the University to enable the University to comply with its obligations under the FOIA; and
- (b) may be required under the FOIA to disclose Information concerning the Supplier, the Goods or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier.

12.2 Notwithstanding any other provision in the Contract, the University shall be responsible for determining in its absolute discretion whether any information relating to the Supplier, the Goods or Services is exempt from disclosure in accordance with the FOIA.

13. Indemnity and insurance

13.1 The Supplier shall keep the University indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) up to a value of £5 million in any one instance suffered incurred by the University as a result of or in connection with:

- (a) any claim made against the University for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against the University by a third party for death, personal injury or damage to property arising out of, or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the University by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

13.2 This clause 13 shall survive termination of the Contract.

13.3 During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, employers' liability insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the University's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

14. Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the party affected. Each party shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a

continuous period of more than 30 days, either party may terminate the Contract by written notice to the other party.

15. Termination

- 15.1 Without prejudice to any other right or remedy, the University may terminate the Contract:
- (a) in respect of the supply of Services, by giving the Supplier three months' written notice (or if the Contract is less than three months in duration by giving one month's written notice); and
 - (b) in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier in accordance with clause 4.
- 15.2 The Supplier may terminate the Contract by written notice to the University if the University has not paid any undisputed amounts within 90 days of them falling due.
- 15.3 In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 15.4 Without limiting its other rights or remedies, the University may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier:
- (a) commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing to do so;
 - (b) repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - (c) undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - (d) becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause (d) in consequence of debt in any jurisdiction;
 - (e) (being an individual) is the subject of a bankruptcy petition or order;
 - (f) (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or
 - (g) suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business.
- 15.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 15.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 15.7 Upon termination or expiry of the Contract, the Supplier shall:
- (a) immediately deliver to the University all Deliverables whether or not then complete, and return all University Materials. If the Supplier fails to do so, then the University may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and
 - (b) give all reasonable assistance to the University and any incoming supplier of the Goods and/or Services (as the case may be).

- 15.8 The Supplier must follow diligent steps to ensure that notice of such termination is served to the Procurement Team of the University, which can be contacted at :

<https://www.kent.ac.uk/finance/procurement/index.html?tab=contact>

Failure to do so will be interpreted as not providing the University of such notice, and any Termination notice in any communication that is not sent to this address may be deemed as having not been served.

16. **Compliance with laws and policies**

- 16.1 In performing its obligations under the Contract, the Supplier shall comply with:

- (a) all applicable laws, statutes, regulations from time to time in force, including the Data Protection Act 1998, the Bribery Act 2010, the Modern Slavery Act 2015, and the General Data Protection Regulations 2018; and
- (b) the University's policies as notified to the Supplier from time to time.

- 16.2 The Supplier shall promptly notify the University immediately in the event of any incident occurring in the performance of its obligations under the Contract which may amount to a breach of this clause.

- 16.3 Full details of the relevant GDPR Clauses are listed at Annex A, A 1 – PART 2, and ANNEX B. The Supplier will adhere with the requirements of these clauses.

17. **Dispute resolution**

- 17.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each party.

- 17.2 If the dispute cannot be resolved by the parties within one month of being escalated as referred to in clause 17.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (**Mediator**) chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.

- 17.3 If the parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.

18. **General**

- 18.1 Each of the parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Contract.

- 18.2 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the parties.

- 18.3 The Contract cannot be varied except in writing signed by a duly authorised representative of both the parties.

- 18.4 The Contract contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 18.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

- 18.6 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Contract. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

18.7 Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of the Contract (whether under the Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

18.8 If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

19. **Notices**

19.1 Any notice to be given under the Contract shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 19.3, e-mail to the address of the relevant party set out in the Order, or such other address as that party may from time to time notify to the other party in accordance with this clause:

19.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

19.3 Notices under clauses 14 and 15 may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 19.1.

20. **Governing law and jurisdiction**

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

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

ANNEX A : General Data Protection Regulation Clauses

Data Protection Legislation:	<p>(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time</p> <p>(ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy;</p> <p>(iii) all applicable Law about the processing of personal data and privacy</p>
Data Protection Impact Assessment :	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	take the meaning given in the GDPR
Data Loss Event :	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier and / or Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach..
Data Subject Access Request:	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
DPA 2018	Data Protection Act 2018
GDPR:	the General Data Protection Regulation (Regulation (EU) 2016/679)
LED:	Law Enforcement Directive (Directive (EU) 2016/680)
Protective Measures:	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
Sub-Processor:	any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.
GDPR :	Means the General Data Protection Regulations, which come into effect on May 25 th 2018
Intellectual Property Rights:	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for

and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- Law:** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier and / or Contractor is bound to comply;
- Order:** the University's order for the supply of Goods and/or Services, as set out in the University's purchase order form.
- Party :** A Party to this agreement
- Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
- Service Specification:** the description or specification for Services agreed in writing by the University and the Supplier.
- Supplier:** the person or firm from whom the University purchases the Goods and/or Services.
- University:** the University of Kent registered in England and Wales by Royal Charter with company number RC000656.
- University Materials:** has the meaning set out in clause 6.3(i).
- VAT:** value added tax in accordance with the provisions of the Value Added Tax Act 1994.
- Working Day:** a day (other than a Saturday or Sunday) in England when banks in London are open for business.

Annex A: GDPR Clauses

1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier and / or their sub-Contractor (hereafter referred to as the Supplier, meaning both and all parties) is the Processor. The only processing that the Supplier is authorised to do is listed in Schedule 1 by the Customer and may not be determined by the Supplier.
- 1.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 1.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - (a) process that Personal Data only in accordance with Schedule 1, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;

- (c) ensure that :
 - (i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) at the written direction of the Supplier, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Supplier shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 1.6 The Supplier's obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
 - (a) the Customer with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Customer following any Data Loss Event;
 - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
 - (a) the Customer determines that the processing is not occasional;
 - (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 1.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
 - (a) notify the Customer in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
 - (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 1.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Customer may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

ANNEX A 2 : Schedule of Processing, Personal Data and Data Subjects

Schedule [1] Processing, Personal Data and Data Subjects

1. The Supplier shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.
3. To be completed before Contract commencement, if applicable

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers,</i>

	<i>agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

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