

Terms and conditions for the purchase of goods and supply of services

1. Interpretation

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

‘Acceptance’ means that University Authorised Officer has accepted that the Goods and / or Services as meeting the requirements of the Contract.

‘Acceptance Date’ means the date on which the Authorised Officer has accepted the Goods and / or Services in accordance with clause 2.3 below.

‘Agreement Manager’ shall have the meaning as set out in clause 3.1

‘Articles’ means all tools, materials, drawings, specifications and other equipment and data provided or loaned to the Supplier by the University.

‘Authorised’ means signed by one of the University’s Authorised Officers.

‘Authorised Officer’ means the University’s employee authorised either generally or specifically by the University to enter into the Contract and act on behalf of the University in relation to the Contract.

"Business Day": a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"CDM Regulations": the Construction (Design and Management) Regulations 2007.

"Conditions": the terms and conditions set out in this document as amended from time to time in accordance with clause 38.6.

"Contract": the contract between the University and the Supplier for the supply of Goods and/or Services in accordance with these Conditions as set out in clause 2.0.

‘Data Controller’ has the meaning set out in the Data Protection Act 1998

‘Data Subject’ has the meaning set out in the Data Protection Act 1998

"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 specification and reports.

"Delivery": as set out in clause 5.

‘Delivery Date’ means the date set out in the Specification.

‘Delivery Instructions’ means the instructions set out in the Contract for the provision of the Goods and/or Services, including any other information the University considers appropriate to the provision of the Goods and/ or Services.

"Goods": the goods (or any part of them) set out in the Order.

‘Good Industry Practice’ means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Supplier engaged in the supply of Goods and Services similar to the Goods and Services under the same or similar circumstances as those applicable to the Contract.

"Goods Specification": any specification for the Goods, including any related plans and drawings, that is set out by the University to the Supplier.

‘Installation’ means 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.

‘Intellectual Property Rights’ means 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.

‘Key Personnel’ means those individuals nominated by the University as being of importance to the completion or delivery of the Services.

‘Law’ means any law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body or any approval of any local authority or statutory undertaker having jurisdiction in relation to the Goods and / or Services or with whose systems the Goods are, or are to be, connected. Including, for the avoidance of doubt, the CDM Regulations.

"Order": in the University's purchase order form or overleaf, as the case may be.

‘Order Amendment’ means an issued and Authorised order amendment from the University or series of Order Amendments.

‘Package’ means any type of package including bags, cases, carboys, cylinders, drums, pallets, tanks, wagons and other containers.

‘Personal Data’ has the meaning set out in the Data Protection Act 1998

‘Premises’ means the location(s) where the Goods and Services are to be delivered or performed

‘Request’ has the meaning set out in the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR)

“Services”: the services, including without limitation any Deliverables, Installation, and consequential connection, testing, commissioning or training to be provided by the Supplier under the Contract as set out in the Service Specification.

‘Service Levels’ means those levels of performance set out in the Service Specification.

“Service Specification”: the description or specification for Services, that is set out by the University to the Supplier.

“Specification”: any Goods Specification together with any Services Specification

"Supplier": the person or firm from whom the University purchases the Goods and/or Services.

‘TUPE’ means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

"University": shall mean Middlesex University Higher Education Corporation, Hendon, The Burroughs, London NW4 4BT

1.2 **Construction.** In these Conditions, unless the context requires otherwise, the following rules apply:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors or permitted assigns.

A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** includes faxes.

2. Basis of contract

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

2.2 The Contract shall comprise any Order, these Conditions and the Specification(s). In the event of any conflict between the provisions they shall be read in the following order of precedence:

- (a) The Order
- (b) The Specification(s)
- (c) The Conditions

2.3 The Contract may be varied by way of an Order Amendment in accordance with clause 18. Each Order Amendment shall have precedence over any earlier Order Amendment.

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

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

at which point the Contract shall come into existence.

- 2.5 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.

3. Agreement and Account Management

- 3.1 The Supplier shall nominate an Agreement Manager who shall have sufficient authority to ensure that required Service Levels are met, to ensure sufficient resources are allocated to the Contract, and to maintain performance to the Specification, to pro-actively co-ordinate and communicate relevant orders and to provide comprehensive support and links between the University and the Supplier. This must include sales support, information and advice on all Goods. The Agreement Manager shall be the prime contact between the Supplier and the University and any notice, communication, information or instruction given or made to or by the Agreement Manager shall be deemed given to / received by the Supplier. It shall be the responsibility of the Agreement Manager to ensure all staff involved in the Contract are fully aware of their obligations.

4. Supply of Goods

- 4.1 The Supplier shall ensure that the Goods shall:
- (a) be free from defects in design, material and workmanship, correspond with their description and any applicable Goods Specification and shall remain so for 12 months after Acceptance; and
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) 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 judgement; and
 - (c) be new (unless otherwise specified on the Purchase Order) and free from defects in design, material and workmanship; and
 - (d) comply with all applicable Laws.
- 4.2 Supplier warrants to the University that that the Goods will be provided:
- (a) in a proper, skilful and workmanlike manner.
 - (b) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice
 - (c) in accordance with the Contract.
 - (d) to the reasonable satisfaction of the Authorised Officer.
- 4.3 The Supplier warrants that to the extent that associated Services are performed, they shall be performed by appropriately qualified, trained

and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice.

- 4.4 The Supplier will make good at its expense any defect in the Goods that the University discovers under proper usage during the first twelve months of actual use or 18 months from the date of Acceptance by the University whichever period shall expire first. Such defects may arise due to faulty design or instruction as to the use of the Goods or inadequate or faulty materials or poor workmanship or any other breach of the Supplier's obligations whether in the Contract or at law.
- 4.5 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 or in the Delivery or the Goods.
- 4.6 Repairs or replacements will themselves be covered by this Contract but for a period of 12 months from Acceptance by the University.

5. Delivery of the Goods

- 5.1 The Supplier shall ensure that:
 - (a) the Goods will be properly packaged to survive transit and storage without damage, clearly and legibly labelled and addressed. The University will not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs. Any packaging that the Supplier requires returning will be done so at the Supplier's cost and risk;
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the University's Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), 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 to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall 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, within 3 days of the date of the Order;
 - (b) to the point of delivery stated in the Order, or as instructed by the University prior to delivery; and
 - (c) during the University's normal business hours, or as instructed by the University.
- 5.3 Time of Delivery shall be of essence of the Contract.

- 5.4 Where the Goods are delivered by the Supplier, delivery shall occur when the Goods are removed from the transporting vehicle and delivered in accordance with the delivery instructions. Where the Goods are collected by the University, delivery shall occur when they are loaded onto the University's vehicle.
- 5.5 The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with the Contract, the Contract shall prevail.
- 5.6 [If the Supplier:
- (a) delivers less than [95]% of the quantity of Goods ordered, the University may reject the Goods; or
 - (b) delivers more than [105]% of the quantity of Goods ordered, the University may at its discretion reject the Goods or the excess Goods,
- and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the University accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.]
- 5.7 The Supplier shall not deliver the Goods in instalments without the University's prior written consent. Where it is agreed that the Goods are to be 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 21.1.
- 5.8 Except where otherwise provided in the Contract, delivery shall include the unloading or stacking of the Goods by the Supplier at such places as the University may direct.
- 5.9 The issue by the University of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The University shall not be deemed to have accepted any Goods other than in accordance with clause 6.
- 5.10 If the Supplier at any time becomes aware of any act or omission, or proposed act or omission by the University which prevents or hinders, or may prevent or hinder the Supplier from supplying the Goods and Services in accordance with the Contract, the Supplier shall inform, in writing, the University.

6. Acceptance

- 6.1 The University shall have the right to reject the Goods and Services in whole or in part whether or not paid for in full or in part within a reasonable time of delivery or performance if they do not conform to the requirements of the Contract.

7. Consumables

- 7.1 The University reserves the right to procure consumables to be used on or with the Goods from the Supplier or such other source as the University deems appropriate. Such procurement of consumables from a source other than Supplier shall not invalidate the University's rights under the Contract and in no way affect the provisions of clauses 4.1 and 4.2 or otherwise provided that the consumables utilised meet the minimum standards as published by Supplier or the manufacturer of the Goods, 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.
- 7.2 In the event that the Supplier shall claim that the use of specific consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to Supplier of meeting its obligations to provide repair or maintain the Goods it shall be for Supplier to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing the Supplier's costs. If the Supplier shall prove 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.

8. Maintenance

- 8.1 If required by the University the Supplier shall enter into a separate contract for the maintenance of the Goods on substantially the same terms as those set out in the Conditions.

9. Spares

- 9.1 The Supplier shall make available to the University, or any nominated third party maintenance provider, on request, with reasonable dispatch and at reasonable prices, all spares and replacement parts for the Goods as the University shall require.
- 9.2 The Supplier 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 latest.
- 9.3 Such spares or replacement parts shall 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.
- 9.4 If during the period set out in clause 9.2 the Supplier or the Supplier's sub-contractor intends to discontinue the manufacture of spares or replacement parts for the Goods the Supplier shall forthwith give notice to the University of such intention and offer to supply the University with a perpetual, royalty free, worldwide non exclusive license to use all of the relevant Intellectual Property Rights in all designs, tools, drawings or other items necessary for the University to procure replacement spares from any third party.

10. Operating manuals and as-fitted drawings

- 10.1 The Supplier 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 so requested. If after the Acceptance Date the operating manuals and documentation need updating or replacing the Supplier 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 written instructions. The Supplier shall provide the operating manuals and other documentation in the media format in which they are available at the appropriate time.

11. Attachment to the Goods

- 11.1 The University shall have the right to attach to, or install into or onto the Goods any other items or 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 such items or goods then this shall not have the effect of degrading the performance of the Goods and shall not relieve Supplier from meeting its obligations under the Contract provided that:-
- (a) the goods attached or installed are not specified in any of the Supplier'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 the Contract; and
 - (b) the Supplier 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 the Contract; and
 - (c) The goods have been attached or installed in accordance with the published instructions of Supplier.
- 11.2 In the event that the attachments and/or installation is made by the University and the Supplier can prove that such attachment or installation is adversely affecting the standard of performance of the Goods then the Supplier shall be entitled to be reimbursed any associated direct costs which the Supplier can demonstrate as being reasonably and necessarily incurred in returning the Goods to the normal standards of performance in accordance with this Contract as a direct result of the attachment or installation made by the University (other than where such attachment or installation has been with the approval of the Supplier).

12 Training

- 12.1 Where appropriate, the price shall include the cost of instructing the University's personnel in the use or operation of the Goods, such instructions shall be in accordance with the requirements of the Contract.

13 Hazardous Goods and Safety

- 13.1 Where the Goods comprise or include substances hazardous to health, the Supplier will supply to the University on or before Delivery with all data necessary to allow the University to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all applicable Laws.
- 13.2 All hazardous Goods must be clearly marked and display the name of the material in English. Transport and other documents must include declaration of the hazard and the name of the material in English. The Goods must be accompanied by emergency information in English
- 13.3 Without prejudice to the generality of clause 13.1, unless specifically required under the Contract, there shall be no asbestos content in the Goods.
- 13.4 If the Services contain any element which is notifiable for the purposes of the CDM Regulations then the Supplier shall be the principal contractor under the CDM Regulations in respect of those Services and shall perform all the functions and obligations required to be performed by the principal contractor under the CDM Regulations.
- 13.5 The Supplier shall promptly notify the University of any health and safety hazards, which may arise in connection with the performance of the Contract. The University shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Premises and that may affect the Supplier in the performance of the Contract.
- 13.6 While on the Premises, the Supplier shall comply with any health and safety measures implemented by or on behalf of the University in respect of Staff and other persons working on those Premises.
- 13.7 The Supplier shall notify the University immediately in the event of any incident occurring in the performance of the Contract on the Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 13.8 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Contract.
- 13.9 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the University on request.

14 Supply of Services

- 14.1 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 this Contract.

- 14.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the University.
- 14.3 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 the best care, skill and diligence in accordance with Good Industry Practice;
 - (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 the Services and the 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 goods and 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;
 - (h) hold all materials, equipment and tools, drawings, specifications and data supplied by the University to the Supplier ("The University's Materials") in safe custody at its own risk, maintain The University's Materials in good condition until returned to the University and not dispose of or use the University's Materials other than in accordance with the University's written instructions or authorisation; and
 - (i) 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.
 - (j) provide the Services via the Key Personnel (if any) who shall not be released from providing the Services to the University, except for reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the University, or the element of the Service in respect of which the individual was engaged has been completed to the University's satisfaction or other extenuating circumstances explained to the University. Any replacements for the Key Personnel shall be subject to the agreement of the University and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by Supplier.

15 Progress and Inspection

- 15.1 The Supplier shall at its expense provide any programmes for the provision of the Goods and Services delivery that the University may reasonably require.
- 15.2 The Supplier shall notify the University, in writing, without delay if manufacturing or production progress falls behind or may fall behind any of these programmes.
- 15.3 The University shall have the right to check progress at the Supplier's manufacturing facilities or offices (including home working) or the offices (including home working) of the Supplier's sub-contractors at all reasonable times to inspect and to reject Goods and Services that do not comply with the Contract. The Supplier's sub-contracts shall reserve such rights for the University.
- 15.4 Any inspection or approval shall not relieve the Supplier from its obligations under the Contract.

16 Offsite provision of Goods and Services

- 16.1 The University recognises that some or all of the Goods and Services may be provided from a site or sites (including home working) of the Supplier and for their sub-contractors. In all circumstances where the Goods and Services or part of the Goods and Services are provided from such site or sites Supplier shall comply with the following requirements:
 - (a) give the Authorised Officer a minimum of one (1) weeks' written notification that off-site working will take place, setting out the reasons for such working, personnel resources (including name, position and role) used and the specific outputs to be delivered by each of the personnel.
 - (b) facilitate the Authorised Officer to contact each of the personnel including but not restricted to, telephone number and/or e-mail addresses for the purpose of ascertaining that the Goods and Services are being provided.
 - (c) ensure that all invoices submitted have signed and authorised daily approval sheets confirming the details as at clause 16.1(a) above
 - (d) give the Authorised Officer or his nominee a right to inspect, test, examine any methods, schedules, calculations, analysis, materials, equipment, reports, working documents used or to be used in connection with the performance of the Services.
- 16.2 The Supplier's failure to comply with the terms of this clause 16 shall give the University the right not to pay for the Goods and Services provided off-site.
- 16.3 Neither failure of the University to inspect nor failure to discover or reject any portion of faulty Goods or Services shall be deemed to imply

acceptance thereof or in any way relieve Supplier from its responsibilities under the Contract.

17 Work on the Premises

- 17.1 If the Contract involves any Goods and Services which Supplier Delivers or performs on the Premises then the following clauses shall apply:
- (a) The Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other persons associated with the Supplier will adhere in every respect to all applicable Laws.
 - (b) The Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other person associated with the Supplier will comply with any regulations that the University may notify to the Supplier in writing.
 - (c) When required, the Supplier and their employees, sub-contractors and their employees shall comply with any security requirements including a right to search when entering or leaving the Premises. The University reserves the right to remove from the Premises anyone suspected of being under the influence of alcohol, or any other substance which has the effect of impairing performance.
- 17.2 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the University's prior consent.
- 17.3 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the performance of the Contract concurrently with the execution of work by others. The Supplier shall co-operate with such others as the University may reasonably require.
- 17.4 The University shall have the power at any time during the progress of the Contract to order in writing:
- (a) the removal from the Premises of any materials which in the University's opinion are either hazardous or not in accordance with the Contract, and/or;
 - (b) the substitution of proper and suitable materials, and/or;
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods and Services which, in respect or material or workmanship, is not in the University's opinion in accordance with the Contract.
- 17.5 On completion of the Contract the Supplier shall remove their plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Contract and leave the Premises in a neat and tidy condition within the timescales instructed to the Supplier by the University.
- 17.6 The Supplier shall ensure that their employees, sub-contractors and their employees and any other persons associated with Supplier shall be dressed appropriately. The University reserves the right to remove from

the Premises anyone who is, in the University's absolute discretion, not complying with this requirement.

- 17.7 Any land or Premises made available from time to time to the Supplier by the University in connection with the Contract shall be made available to Supplier on a non-exclusive basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligation under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 17.8 The Supplier shall limit access to the land or Premises to such personnel as is necessary to enable it to perform its obligations under the Contract.
- 17.9 The Supplier agrees that there is no intention on the University's part to create a tenancy of any nature whatsoever in favour of the Supplier or its personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the University retains the right at any time to use any Premises owned or occupied by the University in any manner it sees fit.
- 17.10 When directed by the University, the Supplier shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the University may reasonably require.
- 17.11 The University's decision as to whether any person is to be refused access to any Premises occupied by or on behalf of the University shall be final and conclusive.
- 17.12 The Supplier shall replace any of its employees who, the University shall have reasonably decided, have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's employees for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.
- 17.13 The Supplier shall bear the cost of or costs arising from any notice, instructions or decision of the University under this clause 17.

18 Variation & Substitution

- 18.1 The University shall have the right, before delivery, to send the Supplier an Order Amendment adding to, deleting or modifying the requirements. If the Order Amendment will cause a change to the price, or Delivery Date then the Supplier must suspend performance of the Contract and notify the University without delay, calculating the new price, Delivery Date immediately at the same level of cost and profitability as the original price. The Supplier must allow the University at least ten (10) working days to consider any new price or Delivery Date. The Order Amendment shall take effect when, but only if, the Authorised Officer accepts it in writing. Subject to other provisions of the Contract, if the

Authorised Officer fails to confirm the Order Amendment within the time stipulated then performance of the Agreement shall immediately resume as though the Order Amendment had not been issued.

19 Compliance with applicable Laws

- 19.1 The Supplier shall (at no additional cost to the University) at all times carry out and provide the Goods and Services in compliance with all Laws. The Supplier shall maintain such records as are necessary pursuant to such Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the University (or its authorised representative).
- 19.2 The Supplier shall neither be relieved of its obligations to supply the Goods and Services in accordance with the terms of the Contract nor be entitled to an increase in the price as the result of any modifications to the Laws.
- 19.3 Without prejudice to clause 19.2, the Supplier shall monitor and shall keep the University informed in writing of any changes in the Laws which may impact the Goods and Services and shall provide the University with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
- 19.4 The Supplier shall consult with the University (and wherever possible agree with the University) on the manner, form and timing of changes it proposes to make to meet any changes in Laws where they would impact the Goods or Services. The Supplier shall not implement any change, without the University's prior written agreement, which would have an adverse effect on the Supplier's ability to provide the Goods and Services in accordance with the Specification.
- 19.5 Without prejudice to the rest of this clause 19, the Supplier shall use all reasonable endeavours to minimise any disruption caused by any changes in applicable Laws introduced pursuant to this clause 19.
- 19.6 All Goods supplied under the Contract must be fully compliant with the Waste Electrical and Electronic Equipment (WEEE) Regulation 2013 and Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive (2011/65/EU)

20 Service Improvement and Technology Refresh

- 20.1 The Supplier shall, at its own cost, submit a report to the University within 30 days of the end of each year of the term of the Contract which shall identify the emergence of new and evolving relevant technologies and processes which could improve the Goods and Services. Such report shall be provided in sufficient detail to enable the University to evaluate properly the benefits of the new technology or process.
- 20.2 If the University wishes to incorporate any improvement identified by the Supplier pursuant to clause 20.1, the parties shall discuss the implementation of the associated change provided always that if the Supplier's costs in providing the Goods and Services as a result of any

such change implemented by the University, an agreed percentage of the cost savings shall be passed on to the University by way of a consequential and immediate reduction in the price for the Goods and Services.

21 Remedies

21.1 If the Supplier fails to deliver the Goods on the Delivery Date and/or perform the Services by the applicable date(s), or if the Goods or Services do not comply with the undertakings set out in clause 4, then, without limiting any of its other rights or remedies, the University shall have the right to any one or more of the following remedies:

- (a) to terminate the Contract with immediate effect;
- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (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 require re-performance of the Services;
- (e) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (f) to recover from the Supplier any costs incurred by the University in obtaining substitute goods and/or services from a third party; and
- (g) to claim damages for any other costs, loss or expenses incurred by the University which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

21.2 The Contract shall apply to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

21.3 The Supplier shall keep the University indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the University as a result of or in connection with:

- (a) 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;
- (b) any claim made against the University by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- (c) 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 or Services, to the extent that the defect in the Goods or Services is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

- (d) the provision of the Goods and Services, including advice and recommendations made and accepted by the University and
- (e) any Installation and/or any Goods and Services and/or advice given or anything done or omitted to be done under, or in connection with the Contract by the Supplier; and
- (f) any damage to the University's property or Premises (including any materials, tools or patterns sent to Supplier for any purpose).

This clause 21.3 shall survive termination of the Contract.

- 21.4 The University's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.
- 21.5 The Supplier must take out and maintain insurance adequate to cover the risks set out in the Contract and for a period of 6 years thereafter and in any event shall take out and maintain:
- (a) Product Liability Insurance coverage of not less than five million pounds sterling (£2,000,000) for any one, or series of claims that may arise; and
 - (b) Professional Indemnity Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise; and
 - (c) Public Liability Insurance coverage of not less than five million pounds sterling (£2,000,000) for any one, or series of claims that may arise.
 - (d) Employer Liability Insurance coverage of not less than ten million pounds sterling (£5,000,000) for any one, or a series of claims that may arise.
- 21.6 The Supplier will take out and maintain such insurances as set out in this clause 21 with a reputable insurance company and shall at the University's request provide evidence of the insurance policy or policies and of payment of the premiums. Supplier's failure to maintain such insurances shall be treated as a material breach of the Contract and shall give the University the right to terminate the Contract in accordance with clause 30.

22 Liability

- 22.1 This clause sets out the University's entire financial liability (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) to the Supplier in respect of any breach by the University of the Contract and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 22.3 Nothing in the Contract limits or excludes the University's liability:
- (a) for death or personal injury resulting from the University's negligence; or

- (b) for any damage or liability incurred by the Supplier as a result of fraud or fraudulent misrepresentation by the University

22.4 The University shall not be liable for:

- (a) loss of profits; or
- (b) loss of business; or
- (c) loss of contract; or
- (d) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

22.5 The University's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract or in respect of any correspondence between the parties (including any competitive process) shall be limited to and shall not exceed £10,000.

23. Title and risk

23.1 Title and risk in the Goods shall pass to the University on completion of Delivery.

24. Price and payment

24.1 The price of the Goods 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 as at the date the Contract came into existence.

24.2 The price of the Goods shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the University.

24.3 If any import or similar duty is payable where Goods are imported into the United Kingdom from abroad, the Supplier will be responsible for paying it notwithstanding that the duty may subsequently be recoverable from the United Kingdom authorities. The University will lend reasonable co-operation to the Supplier in applying to recover duty from the United Kingdom authorities. Any duty recovered will be retained by the Supplier if the price of the Goods excludes import duty. Any duty recovered by the Supplier will be paid to the University if the price of the Goods includes import duty. If the Supplier is unable to recover the import duty from the United Kingdom authorities in no circumstances will this be recoverable from the University.

24.4 The price of the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the 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.

24.5 The Supplier may invoice the University after Acceptance. 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 Order number.

- 24.6 Purchase invoices to the University must be sent to the following e-mail address: Paymentsteam@mdx.ac.uk.
- 24.7 The University shall pay correctly rendered invoices within 30 days of receipt of invoice by the Payments Team. Payment shall be made to the bank account nominated in writing by the Supplier.
- 24.8 All amounts payable by the University under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the University, the University shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 24.9 If a party fails to make any payment due to the other under the Contract by the due date for payment ("due date"), then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 24.10 The University may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

25. Confidential information

- 25.1 A party ("receiving party") shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. Subject to any express provisions of the Contract, the receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

26. Publicity

- 26.1 Unless expressly permitted in writing by the University, the Supplier shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other

illustrations relating to or connected with the Contract or the work of the University.

27. Intellectual Property

- 27.1 All Intellectual Property Rights in any Specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- (a) provided to the Supplier by the University shall remain the University's property absolutely;
 - (b) prepared by or for the Supplier specifically for the University in relation to the performance of the Contract shall belong to the University.
 - (c) Pre-existing at the commencement of the Contract and owned or licensed by the Supplier shall be licensed to the University insofar as it is necessary for the University to exercise its other rights under the Contract. Such a license shall be perpetual, worldwide, irrevocable, royalty-free and capable of sub-license on those terms.

28 Anti-Bribery

- 28.1 The Supplier shall:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
 - (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) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 28.1(b), and will enforce them where appropriate; and
 - (d) promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;
- 28.2 Breach of this clause 28 shall entitle the University to terminate the Contract with immediate effect.

29 Data Protection

- 29.1 The Supplier shall process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Specification and in accordance with the University's instructions from time to time and shall not process the Personal Data for any other purpose. The

Supplier will keep a record of any processing of Personal Data it carries out under the Contract.

- 29.2 The Supplier shall promptly comply with any request from the University requiring the Supplier to amend, transfer or delete the Personal Data.
- 29.3 The Supplier shall only collect any Personal Data in a form which is fully compliant with the Data Protection Act 1998 which will contain a data protection notice informing the data subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purposes for which their Personal Data will be processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, processed to enable processing in respect of the Data Subject to be fair.
- 29.4 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Act 1998 and the data protection principles set out therein, it shall immediately notify the University and it shall provide the University with full co-operation and assistance in relation to any such complaint, notice or communication.
- 29.5 At the University's request, the Supplier shall provide to the University a copy of all Personal Data held by it in the format and on the media reasonably specified by the University.
- 29.6 The Supplier shall not transfer the Personal Data outside the European Economic Area without the prior written consent of the University.
- 29.7 The Supplier shall promptly inform the University if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Supplier will restore such Personal Data at its own expense.
- 29.8 The Supplier shall ensure that access to the Personal Data is limited to:
- (a) those employees who need access to the Personal Data to meet the Supplier's obligations under this Contract; and
 - (b) in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties.
- 29.9 The Supplier shall ensure that all employees:
- (a) are informed of the confidential nature of the Personal Data;
 - (b) have undertaken training in the laws relating to handling Personal Data; and
 - (c) are aware both of the Supplier's duties and their personal duties and obligations under such laws and this Contract.
- 29.10 The Supplier shall take reasonable steps to ensure the reliability of any of the Supplier's employees who have access to the Personal Data.
- 29.11 The Supplier shall notify the University within 2 working days if it receives a request from a Data Subject for access to that person's Personal Data.

- 29.12 The Supplier shall provide the University with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Data.
- 29.13 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the University or as provided for in this Contract.
- 29.14 The University is entitled, on giving at least 2 days' notice to the Supplier, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data by the Supplier.
- 29.15 The requirement to give notice set out in clause 29.14 will not apply if the University believes that the Supplier is in breach of any of its obligations under this Contract.
- 29.16 The Supplier warrants that:
- (a) it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and
 - (b) it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure the University's compliance with the seventh data protection principle.
- 29.17 The Supplier shall notify the University immediately if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data;
- 29.18 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the University against all costs, claims, damages or expenses incurred by the University or for which the University may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this clause 29.
- 29.19 The Supplier may not authorise any third party or sub-contractor to process the Personal Data.

30. Termination

- 30.1 Without limiting its other rights or remedies the University may terminate the Contract:
- (a) in respect of the supply of Services, by giving the Supplier [2] weeks' written notice; and
 - (b) in respect of the supply of Goods, at any time before Delivery with immediate effect by giving the Supplier written notice, in which case the University shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

- 30.2 The University may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material or persistent breach of the Contract and (if such breach is remediable) fails to remedy that breach within [7] days of receipt of notice in writing of the breach;
 - (b) the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (d) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - (e) (being an individual) the Supplier is the subject of a bankruptcy petition or order;
 - (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (g) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
 - (h) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
 - (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 30.2(b) to clause 30.2(i) inclusive;
 - (k) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;

- (l) the Supplier's financial position deteriorates to such an extent that in the University's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

31. Consequences of Termination

31.1 On termination of the Contract for any reason:

- (a) where the Services are terminated, the Supplier shall immediately deliver to the University all Deliverables, whether or not then complete, and return the Articles. If the Supplier fails to do so, then the University may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall solely be responsible for their safe keeping and will not use them for any purpose not connected to this Contract;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

32. Force majeure

32.1 Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 30 Business Days, the University may terminate this Contract immediately by giving written notice to the Supplier.

33 Freedom of Information and Environmental Information Regulations

33.1 The Supplier acknowledge that the University is subject to the requirements of the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR) and the Supplier agrees to assist and cooperate with the University (at the Supplier's expense) as mandated by the University in relation to these laws.

33.2 Any Requests received by the Supplier shall be forwarded to the University immediately.

- 33.3 The provisions of clause 33 shall extend to sub-contractors and the Supplier shall ensure compliance with this requirement.
- 33.4 The Supplier acknowledges that the University may, acting in accordance with the FOIA, or the EIR be obliged to disclose information:-
- (a) without consulting with the Supplier; or
 - (b) following consultation with the Supplier and having taken the Supplier's views into account.

34 Articles on Loan

- 34.1 All Articles loaned by the University to the Supplier in connection with the Contract shall remain always the University's property and shall be surrendered to the University upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by the Supplier solely for the purpose of completing the Contract. The Supplier agrees that no copy of any of the Articles will be made without the consent in writing of the Authorised Officer. Until the Supplier returns all the Articles to the University they shall be at the Supplier's risk and shall be insured by the Supplier at the Supplier's expense against the risk of loss, damage or theft. Any loss of or damage to such Articles shall be made good by Supplier at their expense. All scrap arising from the supply of such Articles must be disposed of at the University's discretion and all proceeds of sales of such scrap must be promptly paid to the University.

35 Supplier Employees

- 35.1 The Supplier shall take all reasonable steps to ensure that any employees, servants or agents of the Supplier and any sub-contractors, their employees, servants or agents, employed in the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming any benefit payable to persons registered as unemployed.

36 Re-tendering and Handover

- 36.1 Within twenty one (21) days of being so requested by the University, the Supplier shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the University to issue invitations to tender for the future provision of the Goods and Services.
- 36.2 Where, in the opinion of the University, TUPE is likely to apply to the Contract on its termination or expiration, the information to be provided by the Supplier under clause 36.1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to): -

- (a) the number of employees who would be transferred, but with no obligation on the Supplier to specify their names; and
 - (b) in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment; and
 - (c) the general terms and conditions applicable to those employees, including probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.
- 36.3 The Supplier shall indemnify the University against any claim made against the University at any time by any person in respect of the liability incurred by the University arising from any deficiency or inaccuracy in information, which the Supplier is required to provide under clause 36.1.
- 36.4 The Supplier shall co-operate fully with the University during the handover arising from the completion or earlier termination of the agreement. This co-operation, during the setting up operations period of the replacement Supplier (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition.

37. TUPE

- 37.1 The Supplier shall indemnify and keep indemnified the University against any loss incurred by the University connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association made against the University in respect of any or all of the Supplier's staff or employees or any other employee of the Supplier or its sub-contractors and which arises from or is connected with any failure by the Supplier to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or TUPE.
- 37.2 The Supplier shall indemnify and keep indemnified the University against any loss incurred by the University connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any of the Supplier's staff or any other person at any time employed by (or engaged as a consultant by) the Supplier or its sub-contractors made against the University at any time for breach of such contract, policy or redundancy, pay, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Supplier and which results from any act, fault or omission of the Supplier or such other person was employed by the Supplier, save to the

extent that the liability arises from any wrongful act by the University or its employees.

- 37.3 The Supplier shall indemnify and keep indemnified the University against any loss incurred from any change or proposed change to the terms and conditions of employment of any or all of the Supplier's staff or any other employee of the Supplier or its sub-contractors where such change is or is proposed to be effected following the transfer of any such person pursuant to the agreement and in respect of any loss incurred by the University arising from the employment or proposed employment of any such person otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.
- 37.4 Except with the proper written consent of the University, the Supplier shall not vary any terms and conditions of employment of any employee or any policy collective agreement applicable to any employee then assigned by the Supplier or its sub-contractors to the discharge of the Contract (provided always that this provision shall not affect the right of the Supplier to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Supplier shall replace such person with another person of similar skills, qualifications and experience) after the University has served notice of the termination of the Contract or after the Supplier shall have otherwise become aware of the proposed termination or re-tendering of this agreement, any Contract or the provision by it of the Goods and Services.

38. General

38.1 Assignment and subcontracting.

- (a) The University may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the University's prior written consent.

38.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to the that party at its registered office (if it is a company) or its principal place of business (in the case of the University: the University Procurement Office, Middlesex University, Hendon, The Burroughs, London NW4 4BT) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 38.2(a); if sent by pre-paid first class post or recorded

delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

38.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

38.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

38.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

38.6 Variation. Except as set out in the Contract, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the University.

38.7 Governing law and jurisdiction. 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.