

LOUGHBOROUGH UNIVERSITY
TERMS AND CONDITIONS OF PURCHASE OF SERVICES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in clause 1.1 below or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Contract, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
 - 1.2.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.2.7 any references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under this Contract;
 - 1.2.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Contract and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear; and
 - 1.2.9 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3 For the purposes of the contract, except where expressly stated to the contrary, the following words in capitals shall have the following meanings:-
- 1.3.1 "**CONDITIONS**" means these terms and conditions as amended from time to time in accordance with clause 9;
 - 1.3.2 "**CONFIDENTIAL INFORMATION**" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor or the University, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential, (whether or not it is

marked as "confidential") or which ought reasonably to be considered to be confidential;

- 1.3.3 **"CONTRACT"** means the documents described in the Form of Tender as forming the Contract or, if there is no Form of Tender, the documents described as forming the Contract in the University's written notification to the Contractor of the award of the Contract, in accordance with these Conditions;
- 1.3.4 **"CONTRACTOR"** means the person(s), firm or company awarded the Contract by the University and any modification thereof as may from time to time be provided or approved in writing to the Contractor by the University;
- 1.3.5 **"CONTRACTOR'S FINAL STAFF LIST"** means the list of all the Contractor's Personnel employed or engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services immediately prior to the Service Transfer Date;
- 1.3.6 **"CONTRACTOR'S PERSONNEL"** means all employees, staff, other workers, agents and consultants of the Contractor and of any Sub-Contractor who are employed or engaged in the provision of the Services (or part thereof) from time to time;
- 1.3.7 **"CONTRACTOR'S PROVISIONAL STAFF LIST"** means a list prepared and updated by the Contractor of all the Contractor's Personnel engaged in, or wholly or mainly assigned to, the provision of the Services (or any part of the Services) at the date of preparation of the list;
- 1.3.8 **"CONTRACT PRICE"** means the sum(s) to be paid by the University to the Contractor under the Contract;
- 1.3.9 **"CONTRACTOR'S TRANSFERRING EMPLOYEES"** means those employees of the Contractor (or any Sub-Contractor) whose contracts of employment will be transferred to the University or a Replacement Contractor pursuant to the Employment Regulations on the Second Service Transfer Date or expiry or termination of this Contract and who appear on the Contractor's Final Staff List;
- 1.3.10 **"CFA"** means the Criminal Finances Act 2017;
- 1.3.11 **"DATA PROCESSOR"** shall have the same meaning as set out in the Data Protection Laws;
- 1.3.12 **"DATA PROTECTION LAWS "** means all legislation and regulations relating to the processing of personal data in England and Wales including the General Data Protection Regulation (GDPR) and/or comparable data protection laws in other jurisdictions as applicable. Further details are set out in the Data Protection Schedule;
- 1.3.13 **"DATA PROTECTION SCHEDULE"** means schedule 1 to this Contract;
- 1.3.14 **"EMPLOYMENT REGULATIONS"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time;
- 1.3.15 **"ENVIRONMENTAL INFORMATION REGULATIONS"** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

- 1.3.16 **“FIRST SERVICE TRANSFER DATE”** means the date on which the Services (or any part of the Services) transfer from the University to the Contractor (or any Sub-Contractor);
- 1.3.17 **“FOIA”** means the Freedom of Information Act 2000, and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
- 1.3.18 **“INTELLECTUAL PROPERTY RIGHTS”** means 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;
- 1.3.19 **“PROCESS” and “PROCESSING”** shall have the meaning as set out in Schedule 1 attached hereto, (the Data Protection Schedule);
- 1.3.20 **“REPLACEMENT SERVICES”** means any services which are identical or substantially similar to any of the Services (or part thereof) and which the University receives in substitution for any of the Services (or part thereof) following the termination or expiry of the Contract or any Service Transfer, whether those services are provided by the University internally or by any Replacement Contractor;
- 1.3.21 **“REPLACEMENT CONTRACTOR”** means any third party supplier of Replacement Services appointed by the University from time to time;
- 1.3.22 **“REQUEST FOR INFORMATION”** means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
- 1.3.23 **“SCOPE”** means the description of the activities to be performed in accordance with the Contract and any modification thereof as may from time to time be provided or approved in writing to the Contractor by the University;
- 1.3.24 **“SECOND SERVICE TRANSFER DATE”** means the date on which the Services (or any part of the Services) transfer from the Contractor (or any Sub Contractor) back to the University or any Replacement Contractor;
- 1.3.25 **“SERVICES”** means the execution of the Scope in accordance with the Contractor including, but not limited to, the provision by the Contractor of all necessary resources such as personnel, goods, materials, plant and equipment;
- 1.3.26 **“SERVICE TRANSFER”** means any change in the identity of the provider of the whole or any part of the Services subsequent to the commencement of the Contract, whether as a result of termination or expiry of the Contract (or any part thereof) or otherwise resulting in a transfer of the Services in whole or in part;
- 1.3.27 **“SITE”** means the place(s) where the Services are to be performed;

1.3.28 **“STAFFING INFORMATION”** means in relation to all persons detailed on the Contractor’s Provisional Staff List, such information as the University may reasonably request (subject to the Data Protection Laws), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (c) details of whether they work wholly or mainly on the Services or any part thereof (the proportion of time spent on the Services or any part thereof) and any and all information required to enable the University to properly assess any likely application of the Employment Regulations;
- (d) the identity of their employer or relevant contracting party;
- (e) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (f) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (g) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
- (h) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (i) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- (j) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals);

1.3.29 **“SUB-CONTRACT”** means any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof, except for clauses 5.7 and 18.3.2 where Sub-Contractor means a contract between two or more suppliers, at any stage of remoteness from the University in a Subcontracting

chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;

- 1.3.30 **“SUB-CONTRACTOR”** means the third parties that enter into a Sub-Contract with the Contractor;
- 1.3.31 **“UNIVERSITY”** means Loughborough University;
- 1.3.32 **“UNIVERSITY’S FINAL STAFF LIST”** means (in the event that the purchase of Services by the University amounts to a service provision change and thereby a relevant transfer pursuant to the Employment Regulations) the list of all the University’s employees employed or engaged in or wholly or mainly assigned to the provision of the Services or part of the Services immediately prior to the First Service Transfer Date;
- 1.3.33 **“UNIVERSITY’S MATERIALS”** means all documents, photographs, prints, materials, plant, machinery, equipment, software, information and any other items supplied to the Contractor by the University;
- 1.3.34 **“UNIVERSITY TRANSFERRING EMPLOYEES”** means those employees of the University whose contracts of employment will be transferred to the Contractor (or any Sub-Contractor) pursuant to the Employment Regulations on the First Service Transfer Date and who appear on the University’s Final Staff List.
- 1.3.35 **“WORKING DAY”** means any day of the week upon which clearing banks in the City of London (UK) are open for business.

2. BASIS OF CONTRACT

- 2.1 The Contractor shall supply the Services to the University in accordance with the Contract.
- 2.2 The Contract constitutes an offer by the University to purchase Services in accordance with these Conditions.
- 2.3 The Contract shall be deemed to be accepted on the earlier of the Contractor issuing written acceptance of the order to purchase the Services or any act by the Contractor consistent with fulfilling the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any terms that the Contractor seeks to impose or incorporate, or which are implied by trade, custom or practice.

3. COMMENCEMENT

- 3.1 The Contractor shall commence the Services either on the date for commencement of the Services which is notified in writing at the date of the award of Contract or otherwise on such date as shall be notified within a reasonable period thereafter by the University in writing. Thereafter the Contractor shall without delay proceed with the Services in accordance with the Contract.

4. DESIGNATED REPRESENTATIVES

- 4.1 The University may by written notice to the Contractor appoint a University Representative who shall have the authority to act on behalf of the University on such matters in connection with the Contract as shall be specified in such notice. The University may by further written

notice or notices to the Contractor revoke or amend the authority of the University Representative or appoint a new University Representative.

- 4.2 Subject to any limitations specified by the University in clause 4 the University Representative may from time to time by written notice to the Contractor delegate all or part of his authority to an assistant or assistants who shall be known as "**University Assistant Representative (s)**". The University Representative may by further written notice to the Contractor revoke or amend the delegated authority of any University Assistant Representative or appoint a new University Assistant Representative.
- 4.3 The Contractor may by written notice to the University appoint a Contractor Representative who shall have authority to act on behalf of the Contractor on such matters in connection with the Contractor as shall be specified in such notice.

5. PAYMENT

- 5.1 The University shall pay to the Contractor the Contract Price.
- 5.2 The University shall be entitled to any discounts for prompt payment, bulk purchase, volume or purchase customarily granted by the Contractor.
- 5.3 The Contractor shall submit to the University, at the address stated in the Contract, a detailed priced invoice or invoices in accordance with the Contract. The invoice(s) shall show or have attached all information necessary to support the invoiced amount therein including all relevant time sheets or schedules.
- 5.4 Where the Contractor submits an invoice to the University in accordance with clause 5.3, the University will consider and verify that invoice in a timely fashion.
- 5.5 The University shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the University has determined that the invoice is valid and undisputed.
- 5.6 Where the University fails to comply with clause 5.4 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 5.5 after a reasonable time has passed.
- 5.7 Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract:
- 5.7.1 Provisions having the same effect as clauses 5.4-5.7 of this Contract; and
 - 5.7.2 A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 5.4-5.7 of this Contract.
- 5.8 All sums payable under the Contract shall be exclusive of Value Added Tax which may be added to the invoice where appropriate. The University shall pay to the Contractor any UK Value Added Tax properly chargeable in respect of the Services after receipt of a tax invoice in a form acceptable to the University.
- 5.9 The Contractor shall pay all other taxes arising under the Contract.
- 5.10 The University shall, unless otherwise specified in the Contract, make payment in Pounds Sterling.

- 5.11 The University shall be entitled to set-off against the Contract Price any sums owed to the University by the Contractor. If the University wishes to set off any amount owed by the Contractor to the University against any amount due to the Contractor, it shall give notice to the Contractor within 30 days of receipt of the relevant invoice, setting out the University's reasons for withholding or retaining the relevant sum.

6. WARRANTIES AND PERFORMANCE

- 6.1 The Contractor warrants that it shall carry out the Services to the satisfaction of the University and in accordance with the provisions of the Contract. The Contractor shall use the standard of skill and care which is ordinarily exercised by experienced and competent contractors performing services of a similar nature to the Services. Where the Services include the provision of goods, materials or plant, the Contractor warrants that these shall be of merchantable quality and fit for their common or specified purposes.
- 6.2 The University may at any time, subject to reasonable notice, inspect any part of the Services and/or premises of the Contractor in order to satisfy itself that the Contractor is able and continuing to comply with these warranties.
- 6.3 Notwithstanding that the Services or any part thereof have been the subject of any instruction, review, approval, acknowledgement or inspection, the Contractor shall not be relieved from any liability or obligation under the Contract.
- 6.4 If the University serves written notice advising the Contractor of any deficiency in the Services, which in the opinion of the University is attributable to the Contractor, the Contractor shall, without prejudice to the University's other rights, promptly remedy the deficiency in the Services as required by the University. All costs of such remedy shall be borne by the Contractor. If the Contractor fails to remedy the deficiency promptly in accordance with the University's written notice, the University may remedy or cause to be remedied any deficiency at the Contractor's cost.

7. CONTRACTOR'S STATUS

- 7.1 In carrying out the Services, the Contractor shall be acting as principal and not as the agent of the University.
- 7.2 The Contractor shall not (and shall ensure that its personnel and Sub-Contractors do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the University.
- 7.3 Nothing in the Contract shall impose any liability on the University in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the University to the Contractor that may arise by virtue of either a breach of the Contract or of any negligence on the part of the University.

8. CONTRACTOR'S PERSONNEL

- 8.1 If the University shall at any time be dissatisfied for any reason with the performance of any person engaged in the carrying out of the Services, the Contractor shall, if the University so requires, cease to engage such person in the execution of the Services and provide a competent substitute within 24 hours at no additional cost to the University.

9. VARIATIONS

- 9.1 The University may from time to time during the Services, until completion thereof in accordance with clause 14, vary the Scope. Such variations may include, but are not limited to additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimensions, level or line, and changes in any specified sequence method or timing of the Services.
- 9.2 If the Contractor considers that any directions of the University vary the Scope and/or will then or later reduce or increase the Contract Price, the Contractor shall promptly notify the University in writing giving details thereof.
- 9.3 Any adjustment to the Contract Price shall be determined in accordance with the rates/prices specified in the Contract (if applicable). If the Contract shall not contain such rates/prices then reasonable rates/prices/reductions shall be agreed by the parties and the Contractor shall provide the University with whatever supporting evidence the University may reasonably require to enable such reasonable rates/prices/reductions to be determined.
- 9.4 If under clause 9.2 the University does not agree that its directions vary the Scope or will reduce or increase the Contract Price, or under clause 9.3, the rates/prices are not agreed between the University and the Contractor, the University shall notify the Contractor in writing of its reasons. Notwithstanding such disagreement the Contractor shall, unless otherwise notified by the University, carry out such variations without prejudice to any of its other rights under the Contract or at law.
- 9.5 The Contractor shall, when carrying out any such variations, be bound by the Contract.
- 9.6 The parties agree that the Contract may be varied to meet any requirements resulting from any change of law or regulations, policies, and so forth, in which event an assessment of any impact on the Contract Price will be undertaken in accordance with clause 9.3 above.
- 9.7 Except as set out in these Conditions or in the Contract, no further variations of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the University.

10. SUSPENSION

- 10.1 The Contractor shall on written instructions of the University suspend the whole of the Services or any part thereof and shall take all measures necessary to protect and secure the same. If, following such suspension, any additional costs are notified to the University by the Contractor and are in the opinion of the University reasonably and necessarily incurred by the Contractor, such suspension shall be treated as a variation in accordance with clause 9 upon substantiation by the Contractor to the satisfaction of the University. The Contractor shall, however, use its best endeavours to mitigate the financial and other effects of such suspension.
- 10.2 Notwithstanding clause 10.1, no additional costs shall be payable by the University if the suspension arises as a result of any act, omission, default or negligence on the part of the Contractor.
- 10.3 The University may at any time by written notice to the Contractor authorise resumption of all or any part of the suspended Services and the Contractor shall, on being given such notice,

promptly resume performance of the Services or part thereof in accordance with the terms of such notice.

11. TERMINATION

- 11.1 Without limiting its other rights or remedies, the University may terminate the Contract, or part thereof if written notice to the Contractor is given, specifying the date from which termination shall be effective. In such event the University shall make reasonable payment to the Contractor for all work performed prior to the date of termination and any approved additional costs necessarily incurred by the Contractor as a direct result of such termination.
- 11.2 Without limiting its other rights or remedies, the University may terminate the Contract, or any part thereof if:
- 11.2.1 the Contractor commits a material breach of any term of the Contract, (including any failure to comply with the Data Protection Laws (or the Data Protection Schedule) and that breach is not capable of remedy; or
 - 11.2.2 written notice has been given to the Contractor of a substantial or persistent breach stating the period during which such breach is to be rectified and the party given such notice has failed to satisfactorily remedy such breach within the period stated. For the purposes of clarification, the University may also terminate the Contract if notice has been given to the Contractor of a substantial or persistent breach of clause 34 (Equality) and in so far as the breach is capable of remedy the Contractor fails to remedy the breach within the period stipulated by the University.
- 11.3 If the University terminates under clause 11.2, the University may in addition to any of its other rights and remedies appoint an alternative contractor to complete the Services and may recover from the Contractor any additional cost incurred over and above the Contract Price in relation to the alternative contractor completing the Services. In the event of termination under clause 11.2, the University shall not be liable for any consequences of the termination the Contractor may be subject to, for example, the employment or engagement of staff or Sub-Contractors or any costs that may have been incurred by the Contractor prior to and/or as a direct result of such termination.
- 11.4 Without limiting its other rights or remedies, either party may terminate the whole or any part of the Contract forthwith by giving written notice to the other party if:-
- (a) the other party 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 or limited liability partnership) 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;
 - (b) the other party 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;

- (c) 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the other party 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;
- (f) 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 other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.4(a) to clause 11.4(h), (inclusive);
- (j) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (k) the other party (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.

11.5 Upon termination for whatever reason, the Contractor shall immediately vacate the Site and return all University Materials.

11.6 In any circumstances, any sums recoverable by the Contractor under this clause shall not exceed the Contract Price.

12. BUSINESS CONTINUITY

12.1 The Contractor will maintain in place throughout the period of the Contract business continuity arrangements and will review those arrangements at appropriate intervals and, if necessary, update them, so as to ensure as far as reasonably practicable that in the event of unexpected circumstances, either within or external to the Contractor's organisation, delivery of the Services to the University is subject to the minimum of disruption.

13. FORCE MAJEURE

- 13.1 For the purposes of the Contract, Force Majeure Event means an event beyond the reasonable control of the party which is affected thereby, including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Contractor or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or Sub-Contractors.
- 13.2 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control.
- 13.3 The Contractor shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations, including complying with its business continuity arrangements under clause 12.
- 13.4 If the Force Majeure Event prevents, hinders or delays the Contractor's performance of its obligations for a continuous period of 28 days, the University may terminate the Contract immediately by giving written notice to the Contractor.

14. COMPLETION OF THE SERVICE

- 14.1 The Contractor shall complete the Services within the period specified in the Contract.

15. CLEARANCE ON COMPLETION

- 15.1 On completion of the Services the Contractor shall promptly remove from the Site of the University all equipment and clear away surplus materials (other than any surplus University's Materials which shall be returned to the University's appropriate store) and rubbish and leave the Site of the University in a clean, safe and tidy condition to the satisfaction of the University.

16. DEFECTS CORRECTION PERIOD

- 16.1 The Contractor shall, for a period of 12 months following completion of the Services in accordance with clause 14, be responsible for repairing or remedying, at its own expense and to the satisfaction of the University, any defects arising from the Services.
- 16.2 The Contract shall apply to all repairs and remedial work required under the provisions of clause 16.1.
- 16.3 Performance of the Contractor's obligations pursuant to this clause shall not relieve the Contractor from any liability arising out of or connected with its other obligations under the Contract.

17. PERFORMANCE REVIEW

- 17.1 Both parties agree to review the performance of the Contract one month after written notice of commencement of the Contract and then undertake further reviews at six-month intervals until such time as the University may decide that a review or reviews are inappropriate.

18. ASSIGNMENT AND SUB-CONTRACTING

- 18.1 The Contractor shall not assign the Contract in whole or in part or any benefit or interest therein without the prior written consent of the University.
- 18.2 The University may assign or otherwise transfer the Contract in whole or in part or any benefit or interest therein to any other party by written notice to the Contractor.
- 18.3 The Contractor shall:
- 18.3.1 not Sub-Contract the whole or any part of the Services including Sub-Contracting for labour only, without the prior written consent of the University. If such consent is given it shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall be responsible for the acts, omissions, defaults or negligence of any Sub-Contractor, its agents, servants, or workmen as fully as if they were the acts, omissions, defaults or negligence of the Contractor;
 - 18.3.2 include in every Sub-Contract a right for the Contractor to terminate that Sub-Contract if the subcontractor fails to comply with applicable law (and a requirement that the subcontractor includes a provision having the same effect in any Sub-Contract which it awards). Where the University considers there are grounds for the exclusion of a Sub-Contractor under Regulation 57 of the Public Contracts Regulations 2015 (whether or not the University constitutes a contracting authority under such regulation), then: (i) if the University finds there are compulsory grounds for exclusion, the Contractor shall replace or not appoint the Sub-Contractor; and (ii) if the University finds there are non-compulsory grounds, the University may require Contractor to replace or not to appoint the Sub-Contractor and the Contractor shall comply with such requirement.
- 18.4 If the consent is granted by the University under clause 18.1 the Contractor shall ensure that all rights, duties and obligations that the Contractor has under the Contract shall be included in any contract that the Contractor has with any Sub-Contractor.

19. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS

- 19.1 In the event that the Employment Regulations apply to any Service Transfer the Contractor and the University shall abide by this clause 19.
- 19.2 **Transfer of UNIVERSITY TRANSFERRING EMPLOYEES to CONTRACTOR on the FIRST SERVICE TRANSFER DATE**
- 19.2.1 This clause 19.2 applies in the event that the University's purchase of the Services from the Contractor amounts to an outsourcing of an existing service currently undertaken by the University and thereby amounts to a relevant transfer pursuant to the Employment Regulations. In the event that the Employment Regulations do not apply to the purchase by the University of the Services, then clause 19.2 shall not apply (but clauses 19.3 to 19.10 shall apply).
 - 19.2.2 In the event that the Employment Regulations do apply, the University and the Contractor believe that, at the First Service Transfer Date, the Contractor will become the employer of the University Transferring Employees pursuant to the Employment Regulations.

- 19.2.3 The University shall indemnify the Contractor in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Contractor in relation to:
- (a) the termination by the University of the employment of any of the University Transferring Employees prior to the First Service Transfer Date;
 - (b) anything done or omitted to be done by the University in respect of any of the University Transferring Employees prior to the First Service Transfer Date which is deemed to have been done by the Contractor by virtue of the Employment Regulations provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of the Contractor (or any Sub-Contractor).
- 19.2.4 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the University Transferring Employees shall be borne by the University up to the First Service Transfer Date and by the Contractor with effect from (and including) the First Service Transfer Date.
- 19.2.5 The Contractor shall indemnify the University in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the University including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- (a) any failure by the Contractor (or any Sub Contractor) to comply with its obligations to the University Transferring Employees including without limitation pursuant to the Employment Regulations;
 - (b) anything done or omitted to be done by the Contractor (or any Sub Contractor) in respect of any of the University Transferring Employees or any other employees of the University whether before on or after the First Service Transfer Date;
 - (c) the employment and/or termination of employment of the University Transferring Employees on or after the First Service Transfer Date;
 - (d) any failure by the Contractor (or any Sub Contractor) to comply with its information and consultation obligations pursuant to regulations 13 and 14 of the Employment Regulations in respect of the University Transferring Employees;
 - (e) any objection by any or all of the University Transferring Employees pursuant to regulation 4(7) of the Employment Regulations or any resignation by or deemed termination of any and all of the University Transferring Employees under regulation 4(9) of the Employment Regulations as a result of the transfer of their employment to the Contractor (or any Sub Contractor) constituting a change in their working conditions or breach of their terms and conditions of employment and/or as a result of any proposal by the Contractor (or any Sub Contractor) not to honour or to vary the University Transferring Employees' contracts of employment or working conditions.

19.3 Employment Exit provisions

- 19.3.1 During the currency of this Contract the Contractor shall provide to the University any information the University may reasonably require relating to any individual employed, assigned or engaged in providing the Services under this Contract (subject to the Data Protection Laws).
- 19.3.2 The Contractor agrees that, if so requested by the University and/or any Replacement Contractor, subject to compliance with the Data Protection Laws:
- within 20 days of the earliest of:
- (a) receipt of a notification from the University of a Service Transfer or intended Service Transfer;
 - (b) receipt of the giving of notice of early termination of the Contract or any part thereof; or
 - (c) the date which is 12 months before the expiry of the Contract (if an expiry date has been agreed between the parties),
- and, in any event, on receipt of a written request of the University at any time, it shall provide the Contractor's Provisional Staff List and the Staffing Information to the University or, at the direction of the University, to a Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List when reasonably requested by the University or any Replacement Contractor;
- 19.3.3 at least 28 days before the Second Service Transfer Date, the Contractor shall prepare and provide to the University and/or, at the direction of the University, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all respects.
- 19.3.4 The University shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services; and
- 19.3.5 on reasonable request by the University the Contractor shall provide the University or at the request of the University, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the University reasonably requests.
- 19.4 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information will be complete, true and accurate in all respects.
- 19.5 From the date of the earliest event referred to in clause 19.3.3 the Contractor agrees that it shall not without the prior written consent of the University, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Contractor's Provisional Staff List and shall not without the prior written consent of the University (such consent not to be unreasonably withheld or delayed):

- 19.5.1 increase the total number of employees listed on the Contractor's Provisional Staff List;
 - 19.5.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;
 - 19.5.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Contractor's Personnel;
 - 19.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Staff List; and/or
 - 19.5.5 replace any of the Contractor's Personnel listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List.
- 19.6 The Contractor will promptly notify the University or, at the direction of the University, the Replacement Contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.
- 19.7 The Contractor will, at its own expense, give (and ensure any Sub-Contractor gives) to the University and/or any Replacement Contractor such assistance as it or they may reasonably require to contest any claim by any person employed by Contractor resulting from or in connection with the Contract.
- 19.8 The Contractor shall perform and discharge all its obligations in respect of the Contractor's Transferring Employees and their representatives for its own account up to and including the Second Service Transfer Date. The Contractor shall indemnify the University and any Replacement Contractor in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the University and/or any Replacement Contractor including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to
- 19.8.1 the Contractor's (or any Sub Contractor's) failure to perform and discharge such obligation;
 - 19.8.2 any act or omission by the Contractor (or any Sub Contractor) on or before the Second Service Transfer Date or any other matter, event or circumstance occurring on or before the Second Service Transfer Date;
 - 19.8.3 the employment and/or termination of employment by the Contractor (or any Sub Contractor) of any of the Contractor's Transferring Employees on or before the Second Service Transfer Date;
 - 19.8.4 all and any claims in respect of all emoluments and outgoings in relation to the Contractor's Transferring Employees, (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions, accrued holiday pay and otherwise) payable in respect of any period on or before the Second Service Transfer Date;
 - 19.8.5 any claim arising out of, or proposal by the Contractor (or any Sub Contractor) to offer any change to any benefit, term or condition or working condition of any

Contractor's Transferring Employees (including without limitation remuneration) arising on or before the Second Service Transfer Date;

- 19.8.6 the employment and/or termination of employment of any person (other than the Contractor's Transferring Employees) whose employment is transferred to the University and/or the Replacement Contractor pursuant to the Employment Regulations and/or any claim made by or in respect of any person employed or engaged or formerly employed or engaged by the Contractor (or any Sub Contractor) (other than a Contractor's Transferring Employee) for which it is alleged (whether correctly or not) that the University or any Replacement Contractor is or may be liable by virtue of this Contract and/or the Employment Regulations;
 - 19.8.7 any act or omission of the Contractor (or any Sub Contractor) in relation to its obligations under regulation 11 of the Employment Regulations, or in respect of an award of compensation under regulation 12 of the Employment Regulations;
 - 19.8.8 any claim made by the Contractor's Transferring Employees or their representatives in relation to any breach of regulations 13, 14 or 15 of the Employment Regulations; and
 - 19.8.9 any statement communicated to or action done by the Contractor or in respect of any of the Contractor's Transferring Employees on or before the Second Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the University in writing.
- 19.9 In the event that any employee, officer, agent of the Contractor (or Sub-Contractor) who is not named on the Contractor's Final Staff List (referred to as an Unnamed Person) transfers, or asserts that they have transferred or should transfer to the University or a Replacement Contractor, and/or asserts that the University or a Replacement Contractor has inherited any liability in relation to any such Unnamed Person whether pursuant to the Employment Regulations, or otherwise, the parties agree:
- 19.9.1 that the University or any Replacement Contractor may terminate the employment or engagement of any such Unnamed Person; and
 - 19.9.2 the Contractor shall (on behalf of itself and any Sub-Contractor) indemnify in full and hold the University and any Replacement Contractor harmless against any and all claims, costs, expenses, proceedings, damages, compensation, fines, demands or liabilities whatsoever and howsoever arising in respect of such Unnamed Person (including any liability to taxation and legal and other professional fees and expenses (together with any VAT thereon)) that the University or any Replacement Contractor may suffer, incur, sustain, pay or be put to by reason of, on account of or arising out of any such employment, engagement and/or termination and/or liabilities otherwise arising.
- 19.10 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor or the University to the Contractor under clauses 19.8 to 19.10 in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 19.11 Notwithstanding clause 19.10, it is expressly agreed that the parties may by agreement rescind or vary clauses 1.1 to 19.10 without the consent of any other person who has the

right to enforce any of those terms notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

20. UNIVERSITY'S MATERIALS

- 20.1 Title to and property (including, for the avoidance of doubt, all Intellectual Property Rights) in University's Materials shall remain with the University at all times.
- 20.2 Notwithstanding the above the Contractor shall be responsible for any loss of or damage to University's Materials whilst in the Contractor's care, custody or control.
- 20.3 The Contractor shall, following completion of the Services or an earlier request by the University, return the University's Materials in good condition, fair wear and tear accepted.
- 20.4 University's Materials made available to the Contractor shall be identified in the Contractor's records and clearly marked as "the property of Loughborough University".

21. INDEMNITY

- 21.1 The Contractor shall fully indemnify the University and keep the University fully indemnified against all liabilities, losses, costs, damages, demands and expenses of every kind (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation or other economic losses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the University as a result of or in connection with:
 - 21.1.1 any breach by the Contractor of any of the terms of the Contract;
 - 21.1.2 any breach by the Contractor of its obligations under the Data Protection Laws or the Data Protection Schedule, including the improper use or storage of personal data;
 - 21.1.3 any breach by the Contractor of its obligations under the CFA;
 - 21.1.4 any claim made against the University for actual or alleged infringement of any third party's Intellectual Property Rights arising out of or in connection with the receipt, use, embodiment in or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Contractor, its employees, agents or Sub-Contractors; save that this indemnity shall not apply in respect of any infringement or alleged infringement arising as a result of the correct use by the Contractor of a design supplied by the University; and
 - 21.1.5 any claim made against the University by a third party for personal injury, death or damage to property arising out of or in connection with the Contract, to the extent that such a claim is attributable to the acts or omissions of the Contractor, its employees, agents or Sub-Contractors.
- 21.2 This clause 21 shall survive termination of the Contract.

22. INSURANCE

- 22.1 The Contractor shall effect and maintain and shall require all Sub-Contractors to effect and maintain throughout the continuance of the Contract, insurance policies with insurers under forms or policies satisfactory to the University which shall include, but not be limited to, the

types and amounts set out in clause 22.4. The Contractor shall bear any and all excesses, deductibles or franchises incorporated therein.

- 22.2 The Contractor may be requested to provide the University with all insurance policies and Certificates of Insurance (“Certificates”). Certificates shall be provided within fifteen (15) days of such request. Failure to provide such Certificates may be taken by the University to indicate that the Contractor has failed to meet its obligations to provide the insurance cover required under the Contract. The Contractor shall also provide the University with updated Certificates on the renewal anniversary of any policies required hereunder.
- 22.3 The Contractor shall give immediate written notice to the University and all insured parties in the event of cancellation or material change which may affect the University or any insured party's interest.
- 22.4 The insurance policies referred to in clause 22.1 are:
- 22.4.1 insurance in accordance with employer's liability insurance and occupational disease for an amount of not less than £10,000,000 (ten million pounds) (or such limit as notified by the University to the Contractor in writing) per occurrence or series of occurrences arising from the one event, which shall comply with all applicable laws. Such insurance shall cover all employees of the Contractor engaged in the performance of the Contractor's obligations under the Contract, and shall contain an indemnity to principals clause.
- 22.4.2 public liability insurance with a combined bodily injury and property damage limit of not less than £10,000,000 (ten million pounds) or such limit as notified by the University to the Contractor in writing) or such other sum as may be specified by the University per occurrence or series of occurrences arising from the one event. Such insurance shall cover all employees of the Contractor engaged in the performance of the Contractor's obligations under the Contract, and shall contain an indemnity to principals clause.
- 22.4.3 professional indemnity insurance for an amount of at least £2,000,000 (two million pounds) per claim occurring during any period of insurance (with no limit on the number of claims covered by the policy of insurance) or such other sum as may be specified in writing by the University. Such insurance shall contain an indemnity to principal clause. The Contractor shall maintain Professional Indemnity insurance cover for the duration of this Agreement and for a period of six (6) years after completion of the Services.

23. INTELLECTUAL PROPERTY

- 23.1 In respect of any goods, information, data or other deliverables that are transferred to the University under the Contract, the Contractor 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 unregistered rights to transfer all such items to the University.
- 23.2 The Contractor 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.
- 23.3 The Contractor shall obtain waivers of all moral rights in the products of the Services 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.

23.4 The Contractor 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 rights, title and interest in and to the Intellectual Property Rights assigned to the University in accordance with clause 23.2.

24. LIENS

24.1 The Contractor shall protect and hold all property of the University free from all liens, charges and other encumbrances.

25. VISITORS

25.1 The Contractor shall obtain the written approval of the University before bringing visitors on to the Site of the University or allowing access by persons to the Site of the University other than those directly employed upon the Services.

25.2 The Contractor shall ascertain from the University any regulations and requirements with which visitors must comply and the Contractor shall make these known to any visitors before their entry on to the Site. The Contractor shall require all visitors to sign an appropriate record.

26. AUDIT ACCESS

26.1 The Contractor shall maintain accurate records relevant to the Contract and shall permit the University or its authorised personnel and/or agent(s) access at all reasonable times to such records.

27. LAWS, REGULATIONS AND BYE-LAWS

27.1 The Contractor shall observe and comply with all statutes and regulations together with any bye-laws and regulations of local and other authorities applicable to the Services at the date of the Contract.

27.2 If any new law, regulation or bye-law is made after the date of acceptance of the tender/offer, which the Contractor considers will wither then or later increase or reduce the Contract Price, the Contractor shall promptly notify the University in writing giving details thereof. If the University agrees, the Contract Price shall be adjusted accordingly.

27.3 The Contractor shall observe any rules of the University applicable to the Site of the University.

28. HEALTH & SAFETY AND ENVIRONMENTAL ISSUES

28.1 The Contractor shall, subject to any express requirements to the contrary in the Contract, comply with the following provisions of this clause in addition to any other requirements for the Contract and nothing in this clause shall derogate from the obligations of the Contractor to comply with its statutory responsibilities insofar as they relate to the Services.

28.2 The Contractor acknowledges that it has been supplied with a copy of the University's rules regarding health and safety. The Contractor agrees to comply with these rules and any

additional rules made known to the Contractor from time to time by the University together with all applicable statutory rules and regulations regarding these matters.

- 28.3 The Contractor shall in relation to all persons affected or likely to be affected by the execution of the Services take such steps as are reasonable practicable to ensure their health and safety.
- 28.4 The Contractor shall carry out such tests and examinations of equipment, plant and materials as may be necessary to ensure the health and safety of anyone who is in, or is likely to come into contact with, or otherwise be affected by the use of such items.
- 28.5 The Contractor shall make available for inspection by the University at all times all registers, records and other documentation concerning health & safety and/or environmental matters and relating to the Services.
- 28.6 The Contractor shall send to the University a copy of every notice of other communication received from or sent to any person or body concerning health and safety and/or environmental matters and relating to the Services.
- 28.7 Either party shall notify the other as soon as practicable of any health and safety hazards at the Site of which it becomes aware. The Contractor will draw these hazards to the attention of its personnel and will instruct those persons in connection with any necessary associated safety measures.
- 28.8 The Contractor shall give the University written notice within a reasonable time prior to the removal from and/or delivery to the Site of anything which is toxic or explosive or otherwise hazardous to the health or safety of persons, property or the environment. The notice shall identify the hazard(s) and give full details of the precautions to be taken when using, handling or otherwise coming into contact with such thing together with details of the safe manner of use, handling, transport and storage. The Contractor shall also ensure that at the time of removal and/or delivery every such thing is suitably packed and is identified on the outside as hazardous.
- 28.9 The Contractor shall use the best practicable means to prevent noxious or offensive emissions (including noise) while in the course of executing the Services and shall render harmless and inoffensive such emissions that cannot be prevented.
- 28.10 The Contractor shall not treat, keep or dispose of any waste produced by the Contractor as a result of the Services in a manner likely to cause harm to the health and safety of any person or harm to the environment and shall comply with every statutory duty which is relevant.
- 28.11 During the execution of the Services the Contractor shall take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment.
- 28.12 The Contractor shall take a positive approach to the protection of the environment insofar as it relates to or is connected with the Services.
- 28.13 The Contractor shall ensure that all Sub-Contractors comply with the provisions of this clause.

29. PUBLICITY

29.1 The Contractor shall obtain written approval from the University prior to taking photographs or making publicity releases or announcements (including advertisements or erection of signs on the Site) regarding either the Contract or the activities of the Contractor relating to its participation on the Contract.

30. CONFIDENTIALITY

30.1 A party (the "**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (the "**Disclosing Party**"), its employees, agents or subcontractors, and any other Confidential Information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or Sub-Contractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

30.2 This clause 30 shall survive termination of the Contract.

30.3 Nothing in this clause 30 shall prevent the disclosure by the Receiving Party of any Confidential Information of the Disclosing Party to the Receiving Party's professional advisors (provided that they are under a professional duty of confidence) or as compelled by law.

30.4 If the Contractor enters or has entered into a separate confidentiality agreement with the University, the terms of such confidentiality agreement shall take precedence over this clause 30.

31. THIRD PARTIES

31.1 For the avoidance of doubt nothing in the Contract or these Conditions shall confer on any Sub-Contractor or other third party any benefit or the right to enforce any provision of this the Contract or these Conditions.

32. WAIVER

32.1 The Contract shall not be waived in whole or in part except where agreed by both parties in writing. The non-enforcement or default of any of the terms of the Contract by either party shall not be construed as a waiver of any of that party's other rights.

33. NOTICES

33.1 All notices given to a party under or in connection with the Contract shall be given in writing and be delivered by hand or sent by facsimile or first class post to the address of the relevant party as stated herein or to any subsequently notified address. Any notice sent by facsimile shall be deemed to have been served at the time of transmission. A notice sent by post shall be deemed to have been served two days after posting.

34. EQUALITY

- 34.1 The Contractor shall;
- 34.1.1 perform its obligations under the Contract and these Conditions (including those in relation to the Services) in accordance with:
- (a) all applicable equality laws including the Equality Act 2010 (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) the University's equality and diversity policy as provided to the Contractor from time to time; and
 - (c) any other requirements and instructions which the University reasonably imposes in connection with any equality obligations imposed on the University at any time under applicable equality law; and
- 34.1.2 take all necessary steps, and inform the University of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation;
- 34.1.3 twelve months from the date of the Contract and annually thereafter submit a report/statement to the University demonstrating its compliance with this clause.

35. PREVENTION OF BRIBERY AND CORRUPTION

- 35.1 The Contractor shall:
- 35.1.1 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 (the "**Relevant Requirements**");
- 35.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 35.1.3 comply with the University's Ethics and Anti-bribery Policy as in force from time to time (the "**Relevant Policies**");
- 35.1.4 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and this clause 35, and will enforce them where appropriate;
- 35.1.5 promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of the Contract;
- 35.1.6 immediately notify the University in writing if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor, and the Contractor warrants that it has no foreign public officials as direct or indirect owners, officers or employees as at the commencement of the Contract.
- 35.2 The Contractor shall ensure that any person associated with the Contractor who is performing services in connection with the Contract does so only on the basis of a written

contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this clause 35 (the "**Relevant Terms**"). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the University for any breach by such persons of any of the Relevant Terms.

35.3 Breach of this clause 35 by the Contractor shall be deemed a material breach incapable of remedy under clause 11.2.1.

35.4 For the purpose of this clause 35, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this clause 35, a person associated with the Contractor includes but is not limited to any Sub-Contractor of the Contractor.

36. PREVENTION OF SLAVERY/FORCED LABOUR

36.1 Slavery: The Contractor confirms that neither it nor any of its personnel (or those of its subcontractors) have been: (i) convicted of any offence; or (ii) the subject of an investigation, inquiry or enforcement proceedings involving slavery or human trafficking. The Contractor shall: (i) comply with all applicable laws relating to slavery, including the Modern Slavery Act 2015; (ii) comply with the University's Anti-slavery Policy as in force from time to time; (iii) maintain a complete set of records to trace the supply chain of all the Services provided to the University under the Contract; (iv) implement a system of training for its employees, suppliers and subcontractors to ensure compliance with this clause 35.4 (and keep a record of all such training).

36.2 Supply Chain: The Contractor shall not purchase any resources and/or materials that have been sourced from entities using forced labour. The Contractor shall implement and maintain due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

37. DATA PROTECTION REQUIREMENTS

37.1 Where any activity carried out by the Contractor in respect of the Services falls within the provisions of any Data Protection Laws, the Contractor shall comply with the Data Protection Laws, as well as with the further obligations set out in the Data Protection Schedule.

38. FREEDOM OF INFORMATION

38.1 The Contractor acknowledges that the University is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and co-operate with the University to enable the University to comply with these information disclosure requirements.

38.2 The Contractor shall and shall procure that its Sub-Contractors shall:

38.2.1 transfer any Request For Information to the University as soon as practicable after receipt and in any event within three days of receiving a Request For Information;

- 38.2.2 provide the University with a copy of all information in its possession or power in the form that the University requires within seven days (or such other period as the University may specify) of the University requesting that information; and
 - 38.2.3 provide all necessary assistance as reasonably requested by the University to enable the University to respond to a Request For Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.
- 38.3 The University shall be responsible for determining in its absolute discretion whether any information:
- 38.3.1 is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations; and/or
 - 38.3.2 is to be disclosed in response to a Request For Information.
- 38.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the University.
- 38.5 The Contractor acknowledges that the University may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004) (the “**Code**”), be obliged under FOIA or the Environmental Information Regulations to disclose Information:
- 38.5.1 without consulting with the Contractor, or
 - 38.5.2 following consultation with the Contractor and having taken its views into account.
- provided always that where this clause applies the University shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 38.6 The Contractor shall ensure that all information produced in the course of or relating to the Contract is retained for disclosure and shall permit the University to inspect such records as requested from time to time.
- 38.7 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the University may nevertheless be obliged to disclose Confidential Information in accordance with clause 38.5 of these Conditions.
- 38.8 This clause shall survive the expiry or termination of this Contract.

39. CRIMINAL FINANCES ACT

- 39.1 The Contractor shall have in place processes, procedures, checks and balances in order to ensure it is able to comply with the requirements of the CFA. In particular, it shall not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence under section 45(1) of the CFA; or a foreign tax evasion facilitation offence under section 46(1) of the CFA. The Contractor shall also procure that any Sub-Contractors it may engage to perform or assist with the provision of the Services, (in whole or in part), has the resources and infrastructure in place to enable compliance with the CFA in full.

39.2 The Contractor shall cooperate with the University in full with regards to any audits it may reasonably undertake in order to examine the processes and practices of the Contractor in the context of the requirements of the CFA.

39.3 The Contractor shall promptly report to the University any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the CFA in connection with the performance of a Contract.

40. DISPUTE RESOLUTION

40.1 The Parties shall resolve disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure (Schedule 2).

40.2 The Contractor shall continue to provide the Services in accordance with the terms of this Contract until the dispute has been resolved.

41. ENTIRE AGREEMENT

41.1 The Contract comprises the entire agreement between the parties to the exclusion of all other terms and conditions and prior or collateral agreements, negotiations, notices of intention and representations and the parties agree that they have not been induced to enter into the Contract on the basis of any representation. Furthermore, the parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth in the Contract and no amendment to the Contract, other than variations to the Scope in accordance with clause 9 , shall be binding on either party unless in writing and signed by an authorised representative of each party.

42. GOVERNING LAW

42.1 The Contract shall be governed and construed in accordance with English Law. In respect of any dispute under or arising out of the Contract, the University and the Contractor hereby agree to submit to the jurisdiction of the English Courts.

**Terms accepted for and on behalf
of Loughborough University**

**Terms accepted for and on behalf
of [contractor]**

.....
Authorised Signatory

.....
Authorised Signatory

.....
Print Name

.....
Print Name

Dated:

Dated:

SCHEDULE 1

DATA PROTECTION SCHEDULE

WHERE THE Contractor PROCESSES PERSONAL DATA, THE TERMS SET OUT BELOW SHALL APPLY:

1. Definitions

In this Schedule, capitalised terms which are not defined below shall have the meanings attributed to them in the Conditions. The following words shall have the following meanings:

“Contract”	means the main Contract to be entered into between the University and the Contractor which expressly incorporates this Data Protection Schedule.
“Data Controller”	is as defined in applicable Data Protection Laws;
“Data Processor/s”	is as defined in applicable Data Protection Laws;
“Data Protection Authority”	means the Information Commissioner’s Office, or any other relevant local governmental or other official regulator(s) responsible for enforcement of the Data Protection Laws from time to time in relation to the University;
“Data Protection Laws ”	means all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 2018, the General Data Protection Regulation 2016 (EU) 2016/679, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and the Electronic Communications Data Protection Directive (2002/58/EC), including any relevant replacement/subsequent European and/or UK legislation as may come into force from time to time and any successor legislation to the same, or, in the event that the UK leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data, together with all codes of practice and other guidance on the foregoing issued by any relevant Data Protection Authority or regulatory body, all as amended from time to time;

“Data Subject”	means any individual who is the subject of any Personal Data;
“Data Transfer Contract”	means the standard contractual clauses for Data Processors established in third countries pursuant to the Commission Decision (2010/87/EU) of 5 February 2010 under the EU Directive (95/46/EC) or any other relevant/subsequent Commission decision as may replace Commission Decision (2010/87/EU) from time to time together with such other clauses as the University shall in its sole discretion deem appropriate and as required under applicable Data Protection Laws;
“Personal Data”	is as defined in applicable Data Protection Laws;
“Personnel”	means any person employed or engaged by or on behalf of Contractor who is engaged in the provision of the Services to University and/or assists the Contractor with its performance of its obligations under the Contract, including Personnel employed or engaged by a Third-Party;
“Process” and other derivations such as “Processed” and “Processing”	means any use of or processing applied to any Personal Data and includes “process” or “processing” as defined in applicable Data Protection Laws. For the avoidance of doubt, this includes, without limitation, collecting, recording, organising, structuring, storing, adapting, altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying Personal Data;
“Schedule”	means this Data Protection Schedule;
“Third Party/Parties”	any agent or subcontractor of the Contractor engaged by the Contractor in relation to the provision of the Service(s) to University and/or who assists Contractor with its performance of its obligations under the Contract in whole or part and who Processes Personal Data in doing so.

“University Data”

means all Personal Data belonging to the University which is from time to time Processed (as defined below) under this Contract by the Contractor and/or on the Contractor’s behalf including but not limited to all electronic data or information submitted by the University and/or the users of the University’s information technology systems and any Personal Data provided by or on behalf of the University and any Personal Data in respect of any student of the University. A schedule of University Data at appendix 2 will identify all the categories of University Data captured.

2. CONTRACTOR AS DATA PROCESSOR

2.1 In respect of the provision of the Services the Parties agree and acknowledge for the purposes of the Data Protection Laws, the University is the Data Controller and the Contractor is a Data Processor in respect of the University Data.

3. CONTRACTOR’S OBLIGATIONS TO ACT ON INSTRUCTIONS

3.1 Act on Instructions

The Contractor hereby warrants and undertakes on a continuing basis that it shall and that it shall procure that any Third Party shall:

- 3.1.1 only Process the University Data in order to provide the Services and then strictly only in accordance with the terms of the Contract, this Schedule and such other written instructions received from the University from time to time relating to the University Data and shall not process the University Data for any other purpose;
- 3.1.2 promptly comply with any request from the University requiring the Contractor to amend, transfer or delete any University Data;
- 3.1.3 promptly and fully cooperate with and assist the University in relation to any reasonable request for cooperation and/or assistance and/or information relating to its Processing of the University Data;
- 3.1.4 at the University’s request, promptly provide it with a copy of all University Data held by the Contractor in the format and on the media reasonably specified by the University;
- 3.1.5 keep full and proper records in accordance with the accountability requirements of the Data Protection Laws;

- 3.1.6 ensure that the University Data shall only be accessible by the Contractor's Personnel and/or Third Parties to the extent they need to know or require access to it for the purposes of properly performing their duties in relation to the Contract and who, where relevant, understand the confidentiality of such University Data and who are contractually bound to maintain its confidentiality.
- 3.1.7 Ensure that all Personnel are aware of the Contractor's duties and their direct duties and obligations under the Data Protection Laws, this Schedule and the Contract.
- 3.1.8 not cause the University to be in breach of any part of the Data Protection Laws whether by reason of an act or omission by it or them, or by any of its or their directors, officers, staff, employees or Third Parties;
- 3.1.9 not allow any Third Party to access the University Data except to the extent that the Contractor obtains the prior written consent of the University and **PROVIDED ALWAYS** that the following conditions shall apply to such consent and after such consent is given:
 - 3.1.9.1 such Third Parties shall not be entitled to subcontract further in whole or in part or to allow any additional third party access to the University Data;
 - 3.1.9.2 the Third Party's appointment is otherwise on the same basis and terms as in this **paragraph 3** and the Contractor shall enter into a written contract with the Third Party accordingly and on terms at least as restrictive as those set out in this Schedule, prior to them processing any University Data and the contract shall be provided to the University and shall be subject to the University's express prior approval;
 - 3.1.9.3 the Contractor shall procure compliance by the Third Party with these terms and shall be responsible for the acts and omissions of such Third Party and shall fully indemnify the University against all losses, damages, charges, fines, costs, or expenses and other liabilities (including without limitation legal fees) incurred by, awarded against or agreed to be paid by the University arising from any act or omission of any Third Party; and
 - 3.1.9.4 the Contractor shall comply with such other conditions as the University may impose in relation to its consent from time to time.
- 3.1.10 the Contractor shall follow its archiving procedures for University Data as set out in the University's Back-Up Policy (available on request from the University), as such document may be amended by the University in its sole discretion from time to time.

- 3.1.11 If at any time the Contractor suspects or has reason to believe that any University Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the University immediately and inform the University of the remedial action it proposes to take.
- 3.1.12 In addition to any other rights or remedies the University may have, in the event of any loss or damage to the University Data, the Contractor shall procure the restoration of the lost or damaged University Data from the latest back-up of such University Data maintained by it] in accordance with the University's Back-Up Policy (available on request from the University), or compensate the University for so doing;
- 3.1.13 the Contractor shall, in providing the Service(s), comply with the University's Privacy and Security Policy (available on request from the University) as amended from time to time by the University in its sole discretion.
- 3.1.14 the Contractor shall at all times in respect of Personal Data of which the University is the Data Controller comply with obligations equivalent to those set out in the Data Protection Laws.

3.2 Security Measures

The Contractor warrants and undertakes on a continuing basis that it shall, and that it shall procure that any Third Parties it contracts with shall:

- 3.2.1 put in place and securely maintain appropriate technical infrastructure and organisational measures in compliance with the Data Protection Laws and recognised best practice, sufficient to protect against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access to the University Data (including, without limitation the measures set out in **Appendix 1**); and
- 3.2.2 take reasonable steps to ensure the continuing reliability and capability of Personnel who have access to University Data and to ensure they are regularly trained and tested in information security sufficient to maintain awareness of their obligations in relation to Personal Data under this Schedule, the Contract and the Data Protection Laws.

3.3 Data Breach

The Contractor warrants and undertakes on a continuing basis that it shall and that it shall procure that any Third Party shall:

- 3.3.1 notify the University within 24 hours of the occurrence of any actual or suspected, threatened or 'near miss' incident of accidental, or unlawful, destruction, or accidental loss, alteration, unauthorised or accidental disclosure of or access to the University

Data or any other breach of security in relation to the University Data or breach of any provision of the Data Protection Laws leading to the same (a “**Data Breach**”).

- 3.3.2 thereafter provide the University within 2 Business Days (being any calendar day which is not a Saturday, Sunday or bank holiday in the United Kingdom) with all relevant information in its or their possession as required by the University to comply with any informal or formal management and reporting obligations recommended or required by Data Protection Laws concerning any such Data Breach, including: type of Personal Data or other information involved; number of records involved/Data Subjects affected; circumstances of Data Breach; mitigation and actions taken; investigation details; details of reports to and reactions from other relevant bodies of the breach; and remedial action taken and intended to be taken to avoid repeats);
- 3.3.3 not make any announcement or publish or otherwise authorise any broadcast of any notice or information about a Data Breach, including to a Data Protection Authority, (a “**Breach Notice**”) without the prior written consent of and prior written approval by the University of the content, media and timing of the Breach Notice (if any).

3.4 **Treatment of Personal Data**

The Contractor warrants and undertakes on a continuing basis that it shall and that it shall procure that all Third Parties shall fully comply at all times with the Data Protection Laws in respect of its and/or the Third Parties’ Processing of the University Data and in particular shall ensure all University Data inputted or recorded is accurate and up to date (to the extent within the Contractor’s or Third Party’s control) and that such University Data is only retained in accordance with the University’s data retention policy (available on request from the University).

3.5 **Audit**

Subject to the University and its auditors or other appointed professionals entering into reasonable confidentiality obligations, the Contractor warrants and undertakes on a continuing basis that it shall and that it shall procure that all Third Parties shall at any time upon request of the University, on reasonable notice and during regular business hours and at no cost to the University:

- 3.5.1 ensure that its and/or their staff, employees, directors, agents and other Personnel are made available to the University and its auditors or other professionals (whether internal and/or external);
- 3.5.2 provide all such persons with access to all relevant information (whether in electronic or hard copy form) relating to its Processing of the University Data and/or the performance of its obligations under this Schedule together with all premises where the University Data is Processed;

- 3.5.3 procure that Personnel and all persons employed or engaged by any Third Party provide all reasonable co-operation and assistance to the University;
- 3.5.4 ensure any vulnerabilities identified by any audits or penetration tests carried out by the Personnel, Third Parties, or those employed or engaged by Third Parties, on their own respective IT infrastructure, are notified to the University if they have not been remediated within one month of the original identification of the vulnerability;

as may be necessary in the reasonable opinion of the University to permit an accurate and complete assessment of the Contractor's compliance with its obligations under this Schedule.

4. **REQUESTS FROM DATA SUBJECTS AND REGULATOR(S)**

- 4.1 The Contractor warrants and undertakes that it shall, and shall procure that all Third Parties shall, notify the University within two (2) Working Days, at no cost to the University, of any complaint by a Data Subject in respect of his Personal Data or any request received from a Data Subject to exercise his Data Subject rights under the Data Protection Legislation, or of any other communication relating directly or indirectly to the Processing of any University Data in connection with this Contract and provide all details of such complaint, request or communication to the University and promptly and fully cooperate and assist the University in relation to any such request or communication.
- 4.2 Neither the Contractor nor any Third Party shall respond directly to any request by a Data Subject for access to their Personal Data, to any complaint by a Data Subject in relation to the Processing of their Personal Data, or (unless and to the extent required by law) any communication by a Data Protection Authority to them in relation to any University Data, in each case unless expressly approved in writing in advance by the University.

5. **DATA TRANSFERS**

- 5.1 Subject to the terms of this Contract the Contractor warrants and undertakes on a continuing basis that it shall not, and that it shall procure that the Third Parties shall not, cause or permit the University Data to be Processed or transferred outside the European Economic Area (the "EEA") without the prior written consent of the University and shall comply with the conditions imposed on such consent by the University as set out in **paragraph 5.2**.
- 5.2 The Contractor warrants and undertakes on a continuing basis that should it obtain the prior written consent referred to in **paragraph 5.1** prior to any Processing of University Data outside the EEA and/or to any transfer of University Data outside the EEA:
 - 5.2.1 Where the Contractor wishes to use a Third Party outside the EEA or who will Process the University Data outside of the EEA, the Contractor shall ensure that either:

- 5.2.1.1 The Third Party is located in a jurisdiction which affords an adequate level of protection to Data Subjects as regards the protection of their Personal Data, in accordance with the Data Protection laws; or
- 5.2.1.2 prior to any transfer or processing each relevant Third Party enters into a Data Transfer Agreement with the University and the Contractor, at no additional cost to the University and to include such terms as the University shall, in its sole discretion, deem reasonable, appropriate or necessary;
- 5.2.2 it shall provide a copy of each such executed Data Transfer Agreement to the University in advance of any such transfer.
- 5.2.3 the Contractor shall procure the compliance of such Third Parties with the terms of the relevant Data Transfer Agreement.
- 5.2.4 The Contractor shall at all times remain responsible for the acts and omissions of the Third Parties it contracts with in relation to the University Data.

6. CONSEQUENCES OF EXPIRY AND TERMINATION

- 6.1 The Contractor will liaise with the University in the 3 month period prior to any termination or expiry of the Contract to ascertain the University's preference and requirements (including details, format, media, method, timing and security) in relation to the secure return to it (or as it directs) of all or part of the University Data (or, the secure deletion or destruction of all or part of the University Data). If it is not possible for this to be carried out prior to termination or expiry, the Contractor shall cooperate with the University about such preference and requirements as soon as possible on termination or expiry.
- 6.2 The Contractor shall fully cooperate and comply with the preferences and requirements of the University pursuant to **paragraph 6.1**. The Contractor shall also procure that Third Parties fully comply with these preferences and requirements.
- 6.3 Subject to **paragraph 6.4**, the parties agree that:
 - 6.3.1 any deletion or destruction of University Data pursuant to **paragraph 6.1** shall be permanent and shall secure deletion of all requested University Data, being all electronic copies of it (in whole or in part) on its IT systems, equipment and any mobile devices, and complete and secure destruction of all hard copies of it (in whole or in part);
 - 6.3.2 any return of University Data pursuant to **paragraph 6.1** shall be the secure return (as required by the University) of all requested University Data in both electronic and hard copy formats (in whole or in part); and

- 6.3.3 The Contractor shall certify in writing to the University that it has complied with **paragraphs 6.1, 6.2, 6.3.1 and 6.3.2** by itself and all Third Parties within 1 month of being requested to do so by the University following termination or expiry of the Contract.
- 6.4 If the Contractor is required by law to retain University Data post termination or expiry and cannot return or destroy it in accordance with **paragraph 6.1**, it shall
- 6.4.1 immediately notify the University in writing of the relevant University Data and the reason it must be retained and the required period of retention;
 - 6.4.2 be entitled to retain a single copy of such University Data;
 - 6.4.3 observe all the requirements of Data Protection Laws in relation to such University Data that is retained;
 - 6.4.4 only Process such University Data in accordance with the specific purposes and for the specific period for which the Contractor is under a legal duty to retain it;
 - 6.4.5 at the end of such period, securely and promptly destroy the University Data within 7 days and certify to the University in writing that it has done so; and
 - 6.4.6 promptly upon request provide to the University such information as is reasonably necessary to enable the University to satisfy itself of compliance by the Contractor and all Third Parties with this **paragraph 6**.

This **paragraph** shall continue in effect following termination or expiry of this Contract.

7. **INDEMNITY**

- 7.1 The Contractor shall, at all times during and after the termination or expiry of this Contract, indemnify the University, keep the University indemnified and hold the University harmless from and against all losses, damages, charges, fines, costs, or expenses and other liabilities (including without limitation legal fees) incurred by, awarded against or agreed to be paid by the University arising from any breach of the Contractor's obligations under this Schedule.
- 7.2 Notwithstanding any other provision of this Schedule or the Contract, Contractor's liability under the indemnity at **paragraph 7.1** shall not be subject to any exclusions or limitations of liability.
- 7.3 The Contractor shall take out insurance sufficient to cover any payment that may be required under this paragraph 7 and produce the policy and receipt for premium paid, to the University on request.

8. **TRAINING**

- 8.1 The Contractor will ensure that all Personnel are appropriately trained to Process Personal Data at all times;
- 8.2 The Contractor will ensure that only those staff trained in Processing Personal Data will Process Personal Data in the provision of the Services.

Appendix 1

Security Measures

1. ORGANISATION OF INFORMATION SECURITY

1.1. Internal organisation

The Contractor will organise and allocate internal roles and responsibilities covering information security sufficient to ensure that any exposure to risk is minimised and to ensure compliance with the Data Protection Laws.

1.2. Mobile devices and teleworking

The Contractor will ensure security policies and controls are in place for mobile devices (such as laptops, tablet PCs, wearable ICT devices, smartphones, USB gadgets and other connected items) and teleworking (such as telecommuting, working-from home, telecommuting, and remote/virtual workplaces).

2. HUMAN RESOURCE SECURITY

2.1 Prior to employment

The Contractor will ensure security responsibilities are taken into account when recruiting permanent employees, contractors and temporary staff (*e.g.* through adequate job descriptions, pre-employment screening) and included in contracts (*e.g.* terms and conditions of employment and other signed Contracts on security roles and responsibilities) whether or not it is intended such persons shall be Personnel.

2.2 During employment

The Contractor will ensure that all Personnel, employees and contractors are appropriately trained in relation to their and the Contractor's obligations under the Data Protection Laws and are made aware of and motivated to comply with their information security obligations under this Contract. A formal disciplinary process should be in place to handle any Data Breach or other security breach. In the event that a Data Breach or other security breach occurs the University should be notified of that Data Breach and/or security breach (as appropriate), the circumstances, surrounding the Data Breach and/or security breach (as appropriate), any

employee's involvement or suspected involvement in any such Data Breach and/or security breach (as appropriate) and the disciplinary process.

2.3 Termination and change of employment

The Contractor will ensure data security aspects of an employee's exit or significant changes of roles are managed. The Contractor will ensure exiting employees and Personnel:

- a) Return all corporate information
- b) Return all corporate equipment,
- c) Update access rights,

are aware of their ongoing obligations under the Data Protection Laws, privacy laws and their contractual terms.

3. ASSET MANAGEMENT

3.1. Responsibility for assets

3.1.1. The Contractor will ensure that all information assets including but not limited to the University Data are inventoried and those with custody, control or responsibility for those assets, are identified and held clearly accountable for their security.

3.1.2. The Contractor will ensure that it has in place appropriate 'Acceptable use' policies, that these are clearly defined, and that all assets, including but not limited to the University Data and all devices on which the University Data has been stored or Processed are returned when Personnel leave employment or engagement of the Contractor or any Third Party.

3.2. Information Classification

The Contractor will ensure that all University Data is classified and labelled by those with custody, control or responsibility for it according to the appropriate security protection for such University Data, and that it is at all times handled appropriately and in accordance with its obligations under the Schedule, the Contract and the Data Protection Laws.

3.3. Media handling

The Contractor will ensure that all information storage media is recorded, managed, controlled, moved and disposed of in such a way that the University Data is not compromised.

4. ACCESS CONTROL

4.1. Business requirements of access control

The Contractor's requirements to control access to information assets and University Data should be clearly documented in an access control policy and appropriate procedures put in place. Furthermore, network access and connections will need to be restricted to ensure security of the University Data.

4.2. Internal user access management

The allocation of internal access rights to Personnel and in relation to other services not connected with the Service(s), other users shall be strictly controlled from initial user registration through to removal of access rights when no longer required, including special restrictions for privileged access rights and the management of passwords, or other authentication information, plus regular reviews and updates of access rights.

4.3 User responsibilities

Personnel and where appropriate other internal users, will need to be made aware of their responsibilities towards maintaining effective access controls *e.g.* choosing strong passwords and keeping them confidential.

4.4 System and application access control

Information access should be restricted in accordance with the access control policy referred to in paragraph 4.1 above *e.g.* through secure log-on, password/authentication management, control over privileged utilities and restricted access to program source code.

5. CRYPTOGRAPHY

5.1 Cryptographic controls

The Contractor should put in place an appropriate policy on the use of encryption, plus cryptographic authentication and integrity controls such as digital signatures and message authentication codes, and cryptographic key management.

6. PHYSICAL AND ENVIRONMENTAL SECURITY

6.1 Secure areas

The Contractor must ensure that there are defined physical perimeters and barriers, with physical entry controls and working procedures, to protect the premises, offices, rooms, delivery/loading areas *etc* of all areas in which the University Data are stored or Processed, against unauthorised access. The Contractor should seek specialist advice in order to put in place appropriate measures to mitigate the risk of and protect against fires, floods, earthquakes, bombs *etc*.

6.2 Equipment security

For the purposes of the annex “Equipment” shall mean the ICT equipment, storage media and any other physical equipment used for the Processing or storage of University Data plus supporting utilities, (such as power and air conditioning) and cabling. All Equipment should be secured and maintained. Equipment and University Data should not be taken off-site unless expressly authorised by the Contractor and must be adequately protected both on and off-site. Any University Data contained on any Equipment must be securely destroyed prior to such Equipment being disposed of or re-used. Unattended Equipment must be secured.

7. OPERATIONS MANAGEMENT

7.1 Operational procedures and responsibilities

The Contractor shall ensure that all IT operating responsibilities and procedures are fully documented. Changes to IT facilities, systems or any Equipment should be controlled by structured and documented change management process. The Contractor should at all times manage the capacity and performance of all IT facilities, systems and the Equipment used in relation to the provision of the services or the Processing of any University Data shall be kept separate from any development, test and operational systems.

7.2 Protection from malware

Malware controls are required on all IT facilities and Equipment including both servers and end-user devices in order to provide protection from malware, which, for the avoidance of any doubt includes ensuring user awareness.

7.3 Backup

The Contractor shall put in place and operate a back-up policy for the protection of the University Data and to ensure compliance with the Schedule. Such backup policy should include, but not be limited to a requirement that appropriate backups are taken at regular intervals and that such backups are retained securely. Backups should be sufficient in frequency to ensure that any potential loss of University Data requiring a ‘restore from backup’ is minimised (such that the loss is limited to one Business day). The Contractor should ensure that both backup and restoration processes are tested at regular intervals to ensure their veracity, effectiveness, adequacy and appropriateness.

7.4 Logging and monitoring

The Contractor should ensure that all system user and administrator/operator activities, exceptions, faults and information security events are accurately logged and protected. Clocks should be synchronised in order to ensure accurate reliable records.

7.5 Control of operational software

Software installation on operational systems and the Equipment should be controlled and Personnel and other end users should not be able to install unauthorised software within the ICT infrastructure or directly onto any of the Equipment.

7.6 Technical vulnerability management

7.6.1 It is the Contractor's responsibility to identify, monitor and remedy any technical vulnerability in its ICT systems, the Equipment and any software used in the provision of the services or storage or Processing of the University Data. The Contractor should ensure that all technical vulnerabilities identified are patched and all systems kept up-to-date.

7.6.2 The Contractor should put in place appropriate and effective rules governing software installation or configuration changes by Personnel and/or other users.

7.7 Information systems audit considerations

The Contractor should ensure that IT audits are conducted at regular intervals, and that they are planned and controlled to minimise any adverse effects on the provision of services or production systems, and to minimise any risk of inappropriate data access.

8. COMMUNICATIONS SECURITY

8.1. Network security management

The Contractor should ensure that all networks and network services are secured as appropriate, for example by way of network segregation where appropriate.

8.2. Information transfer

The Contractor shall ensure that appropriate policies, procedures and Contracts (*e.g.* non-disclosure Contracts) are in place concerning information and University Data transfer to/from Third Parties and in the case of information which is not University Data, any other third party, including policies, procedure and Contracts to govern the use of electronic messaging.

9. SYSTEM ACQUISITION, DEVELOPMENT AND MAINTENANCE

9.1. Security requirements of information systems

The Contractor shall develop and put in place appropriate security control requirements, including requirements to govern web applications and transactions.

9.2. Security in development and support processes

The Contractor shall put in place appropriate rules to govern the development of secure software and systems development. Changes to systems (both applications and operating

systems) should be controlled and documented. Software packages should be modified only in exceptional circumstances, and secure system engineering principles should be followed. The Contractor is responsible for ensuring the development environment is secure, and that any outsourced development is properly vetted and controlled. System security should be tested and acceptance criteria defined to include all appropriate security aspects.

9.3. Test data

The Contractor shall ensure that all test data is carefully selected/generated, controlled and anonymised wherever possible.

10. THE CONTRACTOR'S RELATIONSHIPS

10.1. Information security in the Contractor's relationships.

The Contractor shall ensure that there are policies, procedures, awareness *etc.* in place to protect the Contractor's information and the University's Data that is accessible to Third Parties and, in respect of information and/or data not relating to the University of the Service(s) that is accessible to other IT outsourcers and externals throughout the supply chain. These policies, procedures, awareness *etc.* should be referenced and agreed within the contracts or Contracts with the Third Parties and/or other IT outsourcers and externals as appropriate.

10.2. The Contractor's service delivery management.

Service delivery by Third Parties and, in respect of service delivery not related to the services, other external parties should be monitored, and regularly reviewed/audited against the Contract, such other contracts and Contracts as may be in place and the Data Protection Laws. Service changes should be appropriately controlled.

11. INFORMATION SECURITY INCIDENT MANAGEMENT

11.1. Management of information security incidents and improvements

There should be established responsibilities and procedures to manage (report, assess, respond to and learn from) any Data Breach and or other information security events or incidents and any weaknesses identified should be consistently and effectively remedied.

12. INFORMATION SECURITY ASPECTS OF BUSINESS CONTINUITY MANAGEMENT

12.1. Information security continuity

The Contractor should ensure that the continuity of information security, particularly in relation to University Data, is planned, implemented and reviewed as an integral part of the Contractor's business continuity management systems.

12.2. Redundancies

The Contractor shall ensure that the Equipment and all other IT facilities have sufficient capacity redundancy built in to satisfy availability requirements.

13. COMPLIANCE

13.1. Compliance with legal and contractual requirements

The Contractor must identify, document and comply with its obligations to external authorities, regulatory bodies and other Third Parties in relation to information security, including intellectual property, business records, privacy/personally identifiable information and cryptography.

13.2. Information security reviews

The Contractor's information security arrangements should be independently reviewed (audited) and reported to its management. The Contractor's management are required to routinely review Personnel, Equipment, system's compliance with security policies, procedures etc., and shall initiate and pursue all required corrective actions where necessary.

Appendix 2 - Schedule of Data

Categories of Data Subjects (tick as appropriate)

University Employees	
Students	

Personal data (tick as appropriate)

Date joined the University	
First name	
Last name	
Email	
Graduation year	
Field of study	

Degree	
Clubs and honours	
Address	
Post Code	
Phone number	

Special Category Data (Tick all that apply)

Racial or ethnic origin	
Political opinions	
Religious/philosophical beliefs	
Trade union membership	
State of health	
Criminal convictions	

SCHEDULE 2

DISPUTE RESOLUTION PROCEDURE

1. If any dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (“dispute”), then, subject to paragraph 2 below, and except as expressly provided in this contract, the parties shall follow the dispute resolution procedure set out below:
 - 1.1 a party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with relevant supporting documentation;
 - 1.2 on service of the Dispute Notice, the authorised representatives of each party shall, within 10 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute;
 - 1.3 if the Supplier Manager and LU Manager are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Chief Executive Officer/Managing Director of the Supplier (or if no such post exists, an individual with an equivalent level of authority) (“**Senior Supplier Representative**”) and the Vice Chancellor of LU who shall attempt in good faith to resolve it;
 - 1.4 if the Senior Supplier Representative and the Vice Chancellor of LU are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must give notice in writing (“**ADR notice**”) to the other party requesting a mediation. A copy of the request shall be sent to CEDR Solve. The mediation shall start no later than 30 days after the date of the ADR notice. No party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation, and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
2. If any technical dispute arises out of or in connection with this agreement (including interpretation of any specification), the parties shall follow the expert determination procedure set out below:
 - 2.1 Any technical dispute shall be referred for final settlement to an expert agreed by the parties or, if not agreed within 14 days of either party's written request to the other, as determined, at the written request of either party, by the {insert name of appropriate body}. Such expert shall be deemed to act as an expert and not as an arbitrator. The expert's decision shall, in the absence of manifest error, be final and binding on the parties.
 - 2.2 The parties are entitled to make submissions to the expert including oral submissions and will provide (or procure that others provide) the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision.
 - 2.3 Each party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the parties equally or in such other proportions as the expert shall direct.