UNIVERSITY OF LIMERICK
TERMS AND CONDITIONS OF PURCHASE
EQUIPMENT

1. INTERPRETATION

Definitions: In these Conditions, unless the context requires otherwise:

"**Acceptance**" means acceptance of the Equipment in accordance with Clause 10.4;

"**Agreement**" means the standard conditions of purchase set out in this

"**Acceptance Tests**" means the Commissioning Stage Test and the Final Acceptance Test;

"**Charges**" means the charges payable by the University under the Contract as stated in the Purchase Order;

"**Conditions**" means the standard conditions of purchase set out in document (and unless the context otherwise requires) includes any special terms and conditions agreed in writing between the University and the Supplier;

"**Contract**" means the contract between the Supplier and the University for the sale and purchase of the Equipment in accordance with these Conditions.

"**Commissioning Stage Test**" has the meaning given thereto in Clause 10.1;

"**Defect**" shall include, but shall not be limited to, any fault, error or omission in the Equipment caused by design defect, faulty materials, bad workmanship or other reason or a failure to meet the Equipment Specification;

"**Delivery**" means the delivery by the Supplier of the Equipment to the Installation Site ready for installation;

"**Delivery Date**" means the delivery date specified in the RFT or the Equipment Specification;

"**Documentation**" the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms to be supplied by the Supplier to the University under the Contract;

"**Equipment**" means the Equipment set out in the RFT as more particularly described in the Equipment Specification, including the Software, the Documentation and any other deliverables to be provided under the Contract;

"**Equipment Specification**" means the specification for the Equipment specified by the University;

"**Encumbrance**" includes any interest or equity of any person (including, without prejudice to the generality of the foregoing, any right to acquire, option or right of pre emption) or any mortgage, pledge, lien or assignment or any other encumbrance, priority or security interest or arrangement of whatsoever nature over or in the relevant property;

"**euro**", "**€**" and "**EUR**" means the lawful currency of Ireland;

"**Final Acceptance Test**" means the final acceptance tests to be carried out on the Equipment following Delivery and in accordance with Clause 5.3;

"**Final Acceptance Certificate**" means the certificate to be issued by the University following successful completion of the Final Acceptance Test;

"**Good Industry Practice**" the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;

"**Installation Site**" means the location specified the RFT or the Equipment Specification where the Equipment is to be installed;

"**Intellectual Property Rights**" includes any patent, trade or other mark, registered design, topography right, copyright, database right or any other right in the nature of any of the foregoing (or application, or right to apply for, any of the foregoing), and trade or business name, invention, discovery, improvement, design, technique, confidential process or information or know how, in each case subsisting anywhere in the world and whether registered, unregistered or unregisterable, and any licence or right of user of any of the foregoing , and the full right to all legal protection relating to the same;

"**Ireland**" means the Republic of Ireland;

"**Loss**" includes any demand, claim, proceeding, suit, judgement, loss, liability, cost, expense, fee, penalty or fine;

"**New Release**" a new release of all or any part of the Software suitable for use by the University in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added;

"**New Version**" a new version of the Software released by the Supplier after Delivery which provides additional and/or improved functionality and/or performance;

"**Personnel**" means, in relation to a party, that party's servants, officers, employees, agents or contractors;

"**Project**" means the project of supplying the Equipment to the University;

"**Project IP**" means all Intellectual Property Rights in and to the Equipment but excludes any Proprietary Software;

"**Project Managers**" means the Supplier Project Manager and the University Project Manager and "**Project Manager**" (if the context requires) means either of them;

"**Proposal**" means the document which was submitted by the Supplier in response to the RFT and all subsequent clarifications and communications in relation to same provided by the Supplier to the University (and which were accepted in writing by the University);

"**Proprietary Software**" means software developed by a third party or the Supplier otherwise than pursuant to the Contract and which is integrated into the Equipment;

"**Purchase Order**" means the University's written instruction to supply the Equipment and the Support Services, pursuant to the terms of the Contract;

"**Regulations**" means the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016);

"**RFT**" means request for tender pursuant to which the University invited tenders for the supply of the Equipment and the Services;

"**Services**" means all services to be provided by the Supplier under the Contract including, without limitation, the provision, Delivery and installation of the Equipment and, unless otherwise specifically excluded in the RFT, analysis, design, development, implementation, training, maintenance and end of life services and the Support Services;

"**Software**" means the computer software to be supplied by the Supplier under the Contract and all subsequent amendments, modifications and updates to, or new versions of, such software as may be provided under the Contract;

"**Supplier Project Manager**" means the person (and any replacement) duly appointed by the Supplier and notified in writing to the University to act as the Supplier's representative under the Contract, or in default of notification any director for the time being of the Supplier;

"**Support Services**" means the maintenance and support services in connection with the Equipment to be provided by the Supplier, as set out in the RFT or the Equipment Specification;

"**Statutory Requirements**" means all provisions relevant to the compliance by the Supplier with its duties, either express or implied by the Contract, under every Act of the Oireachtas, and/or statutory instrument made thereunder, orders, local authority and other regulations or requirements applicable from time to time in Ireland;

"**University**" means The University of Limerick;

"**University IP"** means all Intellectual Property Rights owned by the University as of the date of the RFT, or subsequently acquired by the University, including, without limitation, all Intellectual Property Rights in and to all drawings, designs, reports, specifications, calculations or other documents including all information stored on any computer or disk whatsoever provided to the Supplier by or on behalf of the University in connection with the Contract;

"**University Project Manager**" means the person (and any replacement) duly appointed by the University and notified in writing to the Supplier to act as the University's representative under the Contract; and

"**Warranty Period**" means the minimum period of two years or such longer period as may be specified in the RFT commencing from the date that the University issues the Final Acceptance Certificate.

1.1 **Construction**: In these Conditions, unless the contrary intention is stated, a reference to:

(a) the singular shall include the plural and vice versa;

(b) either gender includes the other and the neuter, and vice versa;

(c) a person shall be construed as a reference to any individual, firm or company, corporation, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;

(d) a person includes that person's legal personal representatives, successors and permitted assigns;

(e) time shall be construed by reference to whatever time may from time to time be in force in Ireland;

(f) any agreement document or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time;

(g) a clause or other provision is a reference to a clause or provision of these Conditions, and any reference to a sub provision is, unless otherwise stated, a reference to a sub provision of the provision in which the reference appears;

(h) 'including' means comprising, but not by way of limitation to any class, list or category;

(i) a law includes any provision of any constitution, statute, statutory instrument, order, by-law, directive, regulation or decision of any governmental entity and any judicial or administrative interpretation of any of the foregoing, in each case, as amended, revised, modified or replaced from time to time;

(j) any Irish legal or accounting term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal or accounting document, legal or accounting status, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than Ireland be deemed to include what most approximates in that jurisdiction to the Irish legal or accounting term concerned;

(k) 'writing' shall include a reference to any electronic mode of representing or reproducing words in visible form; and

(l) 'business day' shall be construed as a reference to a day (other than a Saturday or Sunday) on which the banks are generally open for business in Ireland.

1.2 The section headings and captions to the clauses in this C are inserted for convenience of reference only and shall not be considered a part of or affect the construction or interpretation of these Conditions.

1.3 If any ambiguity or question of intent or interpretation arises, these Conditions shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any of the provisions of these Conditions.

2. EFFECT OF PURCHASE ORDER

2.1 The University shall only be bound by an order if it is issued on the University's standard Purchase Order form which is issued in electronic format.

2.2 The Purchase Order constitutes an offer by the University to purchase the Equipment subject to these Conditions. Accordingly, any acceptance of the Purchase Order by the Supplier shall establish a contract for the sale and purchase of that Equipment pursuant to the terms of these Conditions.

2.3 The execution and return of the acknowledgement copy of the Purchase Order form by the Supplier, or the Supplier's execution, commencement of work or commencement of Delivery pursuant to the Purchase Order constitutes acceptance of the Purchase Order by the Supplier pursuant to the terms of these Conditions.

3. SUPPLY OF EQUIPMENT

3.1 The Supplier hereby undertakes to supply the Equipment according to the Equipment Specification, in accordance with the RFT, in the manner set out in the Proposal as accepted by the University and in accordance with the University's directions and the terms of these Conditions. The Supplier shall further supply the Services to the University in accordance with the terms of these Conditions.

3.2 Unless otherwise stated in the RFT, the Supplier shall provide the Support Services with effect from the date of Acceptance of the Equipment.

4. INSPECTION AND TESTS

4.1 At any time prior to Delivery, the University, its representatives or agents shall be entitled to inspect, examine and test the Supplier's work or materials relating to the Equipment or a Purchase Order (the "**Supply**") as more particularly provided in this clause. The Supplier shall provide full access to its premises and production areas and shall obtain such access to any premises of the Supplier's vendors or suppliers involved in the manufacture or supply of the Equipment or otherwise connected to any Purchase Order.

4.2 The Supplier shall make available to the University's representatives (at the Supplier's cost in case of inspections and tests expressly stipulated in the Equipment Specifications), all necessary resources making it possible for the University to check the conformity of the supply to the Equipment Specification and/or a Purchase Order.

4.3 The Supplier must be able to supply all documentary evidence concerning the origin and quality of the raw materials used in the Supply.

4.4 Any inspection, examination or test required or carried out by the Supplier shall not in any way affect the Supplier's warranties or reduce or relieve the Supplier of its obligations under these Conditions or constitute a

waiver by the University and shall be without prejudice to any of the University's other rights under these Conditions. Without prejudice to the generality of the foregoing, the University shall be entitled to inspect the Supply or the Equipment upon its arrival at the Installation Site or after its installation and commissioning, to issue a refusal at any of these times, or to express any reservations. The Supplier's responsibility shall not be reduced or relieved by any observations that the University may make regarding instructions detailed in the Supplier's designs or drawings and concerning the nature and quality of the materials used.

4.5 All tests necessary to inspection, conforming to the stipulations of the Purchase Order, will be carried out by the Supplier (at the Supplier's cost in case of inspections and tests expressly stipulated in the Equipment Specification) and submitted to the University for approval. The Supplier shall carry out all tests not detailed in the Equipment Specification, which may be required by any authority or administration concerning the Equipment or work covered by the Purchase Order.

4.6 If further tests are deemed necessary by the University or the Supplier, these will be carried out at the advance cost of the Supplier (unless stated as otherwise in the Contract).

4.7 The Supplier must be able to reasonably prove that the methods and equipment used for any tests make it possible to guarantee the precision and reliability necessary for the tests, measurements and inspections.

4.8 The Supplier shall notify the University twenty (20) days before the tests referred to in Clause 4.4 are carried out in order to enable the University to appoint their representative(s) in sufficient time, if the University should decide to be present for these tests.

4.9 If the University has not nominated its representative(s) by the date indicated for these inspections by the Supplier, the Supplier may take all measures that it considers necessary to continue the execution of the Purchase Order.

4.10 Whether or not the tests have been carried out in the University's presence, the test certificate and acceptance documents for the main items and raw materials will be supplied to the University in accordance with the terms detailed in the Equipment Specification and/or on the Purchase Order.

4.11 Any inspections or tests under this Clause shall not be grounds for delay in the normal progress of the Purchaser Order.

5. DELIVERY OF EQUIPMENT

5.1 The Supplier shall deliver the Equipment to the Installation Site by or before the Delivery Date at the Supplier's cost and shall install the Equipment and the Software upon such Delivery.

5.2 Time is of the essence as to the delivery of the Equipment under the Contract and if the Supplier does not comply with its obligations in the preceding sentence, the University may, without prejudice to any other rights or remedies that it may have:

(a) cancel the Contract in whole or in part without incurring any liability to the Supplier;

(b) refuse to accept any subsequent delivery of items comprised in the Equipment which the Supplier attempts to make;

(c) purchase substitute items elsewhere; and/or

hold the Supplier accountable for any Loss and additional costs incurred.

5.3 No Equipment may be delivered to the Installation Site without the prior permission of the University Project Manager. The Supplier shall be responsible for the Delivery of the Equipment to the Installation Site and shall provide all labour, materials and plant required for the off-loading and installation of the Equipment as required under these Conditions. The Supplier shall remove its own packaging and leave each Installation Site clean and ready for operational use following the completion of Final Acceptance Test in accordance with Clause 10.

5.4 The Supplier shall forthwith upon Delivery of the Equipment provide to the University from time to time copies of the Documentation containing sufficient up-to-date information for the proper use and maintenance of the Equipment and the Software. Such Documentation may be supplied in electronic form.

5.5 The University may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of the Equipment and the Software and for training the University's Personnel in use of the Equipment and the Software.

5.6 If requested by the University, the Supplier shall, forthwith upon the date of Acceptance, provide a copy of the source code for all Software contained in the Equipment to the University.

5.7 Title and risk in the Equipment shall pass to the University on Delivery in accordance with this Clause 5. Until such Delivery, the Equipment shall be at the risk of the Supplier. If the Equipment is paid for before Delivery ownership shall pass to the University once payment has been made. The passing of ownership in the Equipment is without prejudice to any right of rejection to which the University may be entitled under these Conditions or otherwise and to the Equipment remaining at the risk of the Supplier until Delivery.

5.8 The Supplier shall be responsible for arranging and discharging the cost of transporting the Equipment to the Installation Site including, without limitation, the cost of all packaging, load out, tie down, offloading, customs clearance, insurance, freight and port charges. Customs clearance of the Equipment at import, or any prior export formalities that are necessary to effect shipment, shall be the responsibility of the Supplier.

5.9 The Supplier shall comply with all laws relating to the labelling, packaging and carrying of the Equipment up to delivery at the Installation Site and shall be responsible for ensuring that such labelling, packaging, carriage and delivery are made in accordance with Good Industry Practice and all applicable legal requirements and meet with all relevant government and local authority requirements. For the avoidance of doubt, the Supplier shall be obliged to procure that all third party carriers and other contractors engaged by it shall comply with the foregoing.

6. HEALTH & SAFETY

6.1 Without prejudice to the generality of Clause 19.8(a) the Supplier shall comply with all necessary safety precautions and safety legislation relevant to the Services including but without limitation the Safety, Health and Welfare at Work Act, 2005, and any amendments thereof and/or regulations rules or orders made pursuant thereto, including the Safety Health & Welfare at Work (Construction) Regulations 2006 (in so far as they are applicable to the Services), the Safety Health and Welfare at Work (General Applications) Regulations 1993, 2001 & 2003, the Confined Space Regulations 2001 and any amendments thereof. The Supplier shall also comply, and shall procure that each of the Supplier's Personnel comply, with any safety and site rules or other policies or requirements as

may be advised of by the University (a copy of such safety & site rules, policies or requirements must be secured by the Supplier before it proceeds with any of its Services).

6.2 If there is any alleged breach of the University's policies and procedures by the Supplier or any of the Supplier's Personnel, the University reserves the right to require the Supplier to remove those members of the Supplier's Personnel from the University's premises and from performance of the Services.

6.3 The Supplier shall procure that the Supplier's Personnel participate in any investigations, enquires or hearings provided for under any of the University's policies, and the failure by the Supplier or any of the Supplier's Personnel to participate in any such procedure shall entitle the University to require the Supplier to remove any of the Supplier's Personnel from its premises.

6.4 The Supplier shall ensure that any of its premises to be visited by the University's Personnel comply with all applicable health and safety laws.

7. **FACILITIES TO BE PROVIDED**

Whenever reasonably necessary during the installation of the Equipment and performance of the Final Acceptance Test on the Equipment, the University shall provide for each of the Supplier's Personnel engaged in work at the Installation Site, a suitable place of work and necessary supplies and amenities.

8. **DISRUPTION**

The Supplier shall take all reasonable care to ensure that, in performing the Services, it does not disrupt the operations of or, save as may be reasonably unavoidable, inconvenience the University, its employees, agents contractors or other person on the Installation Site.

9. **UNIVERSITY MATERIALS AND EQUIPMENT**

9.1 Where any material or equipment is supplied to the Supplier by or on behalf of the University for use in connection with the supply of the Services, such material or equipment shall at all times remain the property of the University and shall be returned to the University forthwith after the completion of the relevant Services.

To the extent that the supply of the Services requires use by the Supplier of the University's equipment and software, the Supplier shall use such equipment and software in accordance with any applicable third party licences which have been notified to it in writing. The Supplier's use of the University's equipment and software shall be restricted solely to that which is required for the purposes of providing the Services under the Contract.

10. **ACCEPTANCE**

10.1 Unless provided otherwise in the Contract or the Equipment Specification, when the Equipment has been installed at the Installation Site and is ready for testing, the following tests shall be carried out at commissioning stage (the "**Commissioning Stage Test**"):

(a) Pre-commissioning tests, which shall include the appropriate inspections and "dry" or "cold" functional tests to demonstrate that each item of Equipment can safely undertake the next stage (b);

(b) Commissioning tests, which shall include the specified operational tests to demonstrate that the Equipment can be operated safely and as specified under all available operating conditions; and

(c) Trial operation, which shall demonstrate that the Equipment performs reliably and in accordance with the Equipment Specification and these Conditions.

10.2 If the Supplier is not required by the University to perform installation of the Equipment the following provisions shall apply:

(a) Following completion of the installation of the Equipment by the University in accordance with the Supplier's installation instructions, the University shall proceed with the Commissioning Stage Test in accordance with the commissioning instructions provided by the Supplier. The Supplier shall attend at such Commissioning Stage Test unless stated as otherwise in the Equipment Specification or, is otherwise not required by the University.

(b) If defects in the Equipment are discovered during the Commissioning Stage Test, the Supplier shall at the University's request, attend at the Installation Site to commission the Equipment for the purpose of rectifying such defects. If the defects are due to incorrect installation or incorrect application of the commissioning instructions by the University, the University will pay the Supplier the reasonable and properly vouched additional costs of remedying the defects and for attending at the Installation Site for such purpose.

(c) If the defects are due to defects in the Supplier's installation instructions or commissioning instructions the Supplier shall remedy the installation and commissioning defects at its own cost, (including the cost of attending on the Installation Site), immediately.

(d) If the Equipment fails to pass the Commissioning Stage Test, the Supplier shall make good at its own cost any defect without delay and the tests shall be repeated at times and on days which do not hinder other activities on the Installation Site.

(e) During trial operation, when the Equipment is operating under stable conditions, the Supplier shall give notice to the University that the Equipment is ready for the Final Acceptance Tests (which shall include performance tests to demonstrate whether the Equipment conforms with the Equipment Specification and otherwise with the terms of these Conditions).

(f) Any product produced by the Equipment during trial operation shall be the property of the University.

(g) The University shall not be deemed to have accepted any Equipment until the Final Acceptance Certificate is issued pursuant to Clause 10.4.

10.3 If the Supplier is required to perform installation of the Equipment (which shall be performed at no additional cost to the University), the following provisions shall apply:

(a) Following completion of the installation, as confirmed by or on behalf of the University, the Supplier shall proceed (in consultation with the University or its engineer) with an examination of the Equipment in order to check that all Equipment detailed in the Contract (including emergency spare parts) has been supplied and is ready to be commissioned.

(b) The Supplier shall give the University not less than 21 days' notice of the date after which the Supplier will be ready to carry out the Commissioning Stage Test. The Commissioning Stage Test may be delayed at the University's request if other work being carried out on the Installation Site does not make it possible to proceed.

(c) The Supplier shall proceed with the Commissioning Stage Test on the date agreed by the University.

(d) If defects are discovered during the Commissioning Stage Test, the Supplier shall remedy the defects at its own cost, immediately.

(e) If the Equipment fails to pass the Commissioning Stage Test, the Supplier shall make good any defect and the tests shall be repeated at times and on days that do not hinder other activities on the Installation Site.

(f) During trial operation, when the Equipment is operating under stable conditions, the Supplier shall give notice to the University that the Equipment is ready for the Final Acceptance Tests (which shall include performance tests to demonstrate whether the Equipment conforms with the Equipment Specifications and otherwise with the terms of the Contract).

(g) Any product produced by the Equipment during trial operation shall be the property of the University.

10.4 The University shall issue a Final Acceptance Certificate when the Final Acceptance Test have been successfully passed and the Equipment shall be deemed to be accepted by the University on the date of the Final Acceptance Certificate.

10.5 If the Equipment fails to materially pass the Commissioning Stage Test or the Final Acceptance Test due to reasons attributable to the Supplier, the University shall be entitled to: (a) order further repetition at the Supplier's cost of Commissioning Stage Tests or Final Acceptance Tests, or (b) if the failure deprives the University of substantially the whole benefit of the Equipment, reject the Equipment in whole or in part and terminate the Contract as a whole or in respect of such major part which cannot be put to the intended use and without prejudice to any other rights under these Conditions or otherwise, the University shall be entitled to recover (by way of set off or otherwise) from the Supplier all sums paid for the Equipment or for such part (as the case may be) and all Losses suffered, provided that the Supplier in any event shall be given a reasonable opportunity to cure any defect in the Equipment giving rise to such reasons after receipt of prompt written notice thereof (if such defect is remediable).

10.6 If the University rejects the Equipment then risk in the Equipment shall pass to the Supplier upon notice of such rejection.

11. INTELLECTUAL PROPERTY

11.1 All University IP shall remain vested in and remain the absolute property of the University.

11.2 The entire Project is conducted by the Supplier on behalf of the University. The University shall have sole ownership and exclusive rights to all Project IP. In consideration of the payment of the Charges and other good and valuable consideration, the Supplier now assigns and transfers to the University absolutely all right, title and interest in the Project IP for the full terms thereof throughout the world.

11.3 The Supplier shall specifically identify to the University any Proprietary Software used in the Equipment. The Supplier grants (or shall procure the direct grant) to the University a non-exclusive, perpetual, worldwide, royalty free, fully paid-up and irrevocable licence to use such Proprietary Software and shall permit the use by its Personnel of such Proprietary Software for the purpose of operating and using the Equipment.

11.4 The Supplier unconditionally, irrevocably and in perpetuity waives all moral and author's rights and rights of a similar nature under the laws of any jurisdiction in the Equipment, insofar as it may lawfully do so, in favour of the University and, for the avoidance of doubt, this waiver shall extend to the licensees and successors in title to the copyright in such works or material.

11.5 The Supplier shall, at the request and expense of the University, do all things necessary or desirable to substantiate the rights of the University under this clause.

11.6 The Supplier shall indemnify and keep indemnified the University on demand from and against all Losses (an "**Indemnified Loss**") arising from or incurred by reason of any infringement or alleged infringement of any third party Intellectual Property Rights in consequence of the use or possession by the University of the Equipment, or the supply of the Services (or any part thereof) by the Supplier under the Contracct.

11.7 Subject further to it being indemnified and secured to its satisfaction by the Supplier from and against any Losses which it may suffer or incur in so doing, the University may, at the written request of the Supplier, allow the Supplier to take the sole conduct of such actions as the Supplier may deem appropriate in connection with any such Indemnified Loss and the Supplier shall consult with the University and keep it fully and promptly informed of progress in relation to such proceedings and prosecute the claim diligently and with due regard to the reputation of the University.

12. CHARGES AND TERMS OF PAYMENT

12.1 The Charges payable by the University hereunder are set out in the Equipment Specification and shall be paid by the University within 30 days of receipt by the University's Accounts Payable Department of valid and undisputed invoices (and such supporting documentation as may be required by the University from time to time) which shall quote a valid Purchase Order number issued by the University. Unless stated otherwise in the RFT, the provision of spare parts and maintenance in respect of the Equipment shall be included in the Charges.

12.2 The Supplier acknowledges that payment by the University may be in instalments, linked to agreed milestones as set out in the Equipment Specification, including the successful completion of Acceptance Tests.

12.3 The University reserves the right to withhold payment against any invoice which is not submitted in accordance with the Contract and shall notify the Supplier in writing of the reasons for withholding payment.

12.4 The Charges are exclusive of Value Added Tax or any other applicable sales taxes. The charges shall be deemed to include all import and customs duties, and like imposts and surcharges.

12.5 The Charges are fixed and may not be increased by the Supplier without the prior written agreement of the University. The Equipment Specification sets out an exhaustive list of the payments due from the University to the Supplier.

12.6 The payment by the University of any Charges is conditional upon:

(a) compliance by the Supplier with the provisions of these Conditions;

(b) the relevant invoice stating a valid Purchase Order number which has been issued by the University; and

(c) the University being in possession of the Supplier's current tax clearance certificate and the Supplier shall comply with all EU and domestic tax law and requirements including but not limited to the terms of Circular 43/2006 issued by the Department of Finance, a copy of which is available at www.finance.gov.ie.

12.7 Any overpayment by either party whether of the Charges or of Value Added Tax or otherwise, shall be a sum of money recoverable by the party who made the overpayment from the party in receipt of the overpayment.

12.8 The Charges shall be discharged as provided for in this Clause 12 subject to the retention by the University in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services

Withholding Tax payable to the Supplier. Any and all taxes applicable to the supply of the Equipment will be the sole responsibility of the Supplier and the Supplier so acknowledges and confirms.

12.9 Where an invoice is subject to RCT (Relevant Contracts Tax), the contract number must be quoted on the invoice.

13. **WARRANTIES AND REPRESENTATIONS**

13.1 **General Warranties**: The Supplier represents and warrants (on a continuing basis) to the University that:

(a) it is a company duly incorporated and validly existing under the laws of the jurisdiction of its incorporation and has the corporate power to own its assets and carry on its business as it is now being conducted;

(b) it has the corporate power to enter into and perform, and has taken all necessary corporate action to authorise the entry into, and performance and delivery of, the Contract and the transactions contemplated by the Contract;

(c) the Contract constitutes its legal, valid and binding obligation;

(d) the entry into and performance by it of, and the transactions contemplated by the Contract do not and will not (i) conflict with any laws binding on it; (ii) conflict with its constitutional documents; or (iii) conflict with any document which is binding upon it or any of its assets;

(e) so far as concerns its obligations under the Contract, all authorisations, consents, registrations and notifications required in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Contract have been obtained or effected (as appropriate) and are in full force and effect;

(f) the contents of and all information supplied as part of the Proposal are true, complete and accurate in all respects;

(g) where applicable, the status of the Supplier, as declared in the "*Declaration as to Personal Circumstances of Tenderer*" in the Proposal, which confirms that none of the excluding circumstances listed in Article 45 of EU Directive 2004/18/EC as implemented into Irish law by European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. No. 329/2006) apply to the Supplier, remains unchanged;

(h) it is subject to civil commercial law with respect to its obligations under the Contract;

(i) neither it nor any of its assets is entitled to any right of immunity and the entry into and performance of the Contract by it constitute private and commercial acts;

(j) it shall exercise reasonable skill and care in discharging its obligations under the Contract; and

(k) it shall comply with all applicable laws and regulations in performing its obligations under the Contract.

13.2 **Warranties**: The Supplier represents, undertakes and warrants to the University on a continuing basis that:

(a) the Equipment when delivered to and accepted by the University shall conform in all respects to the Equipment Specification and to any description given by the Supplier in respect of the Equipment and with the other requirements of these Conditions;

(b) if a sample of the Equipment (or relevant part) was provided to the Supplier before Delivery, the bulk of the Equipment (or relevant part as appropriate) shall correspond with the sample;

(c) the Equipment shall be of the best materials and workmanship;

(d) the Equipment shall be of merchantable quality, free from Encumbrances, free from Defects for the duration of the Warranty Period and shall remain fit for use in its intended purpose;

(e) the Equipment when delivered to and accepted by the University will comply with all applicable laws including, without limitation, Irish safety, radiological, electrical, road traffic laws and regulations, environmental regulations, and CE marking requirements as more specifically described in the RFT and the Equipment Specification;

(f) all materials used or supplied by the Supplier in the performance of the Services shall be of merchantable quality, free from defects in materials and workmanship, free from any third party rights or interest (such as liens, charges or options) and shall be fit for the purpose for which they were intended;

(g) it has not used or specified for use and will not use or specify for use (or permit the use or specification by others) as part of the Equipment any substances, or material which are not in accordance with European Standards or Codes of Practice in so far as they may be applicable or relevant (and if there are not European Standards or Codes of Practice then the appropriate national Standards and Codes which shall be applicable or relevant) or any materials or substances known to the trade or profession at the time of specification to be deleterious to health or safety or the durability or suitability in the particular circumstances in which the same is used;

(h) it has and shall continue in performing the Contract comply with the Statutory Requirements;

(i) the Equipment shall not infringe the Intellectual Property Rights of any third party;

(j) good and unencumbered title to the Equipment will pass to the University on Delivery (or if earlier, upon payment for the Equipment);

(k) none of the New Releases, New Versions and Documentation supplied by the Supplier during the provision of the Support Services shall infringe the Intellectual Property Rights of any third party;

(l) it will perform the Support Services in a timely, reliable and professional manner, in conformity with Good Industry Practice by a sufficient number of competent Support Staff with appropriate skills, qualifications and experience, and has and will at all times have the ability and capacity to meet such requirements;

(m) it is in compliance with, and will perform the Support Services in compliance with, all applicable law and regulations; and

(n) in respect of New Releases no release issued by the Supplier in accordance with the Support Services will adversely and materially affect the performance or functionality of the Equipment or the Software.

13.3 **Remedy for breach of Warranties**: In the event of any breach of the warranties or representations in Clause 13.2, and in addition to and without prejudice to any other rights which the University may have, the University may in its discretion:

(a) require the Supplier to remedy the Defect(s) in the Equipment and any damage or corrections or modifications to other property (including the University's property) arising directly or indirectly out of any Defect(s) in the Equipment in which event the Supplier shall proceed to carry out such remedial works with all possible speed and/or supply replacement Equipment; or

(b) in the event that remedy the Supplier is deemed inappropriate by the University, arrange for a person other than the Supplier to remedy the

Defect(s) in the Equipment and any damage, corrections or modifications to other property (including the University's property) arising directly or indirectly out of the Defect(s) in the Equipment, in which event the Supplier shall indemnify the University on demand against all costs incurred in connection with such remedial works.

13.4 The provisions of Clause 13.3 shall apply to any Equipment supplied by the Supplier to the University in place of any defective Equipment

14. **REMEDYING OF DEFECTS**

14.1 Without prejudice to the University's other rights under these Conditions or otherwise, if, during the Warranty Period, any Defect appears in the Equipment which is caused by or arises out of a failure by the Supplier to comply with its obligations under the Contract, the Supplier shall, upon being notified by the University, promptly and at the cost and risk of the Supplier, repair, replace or otherwise make good any Defect together with any damage to the Equipment. The Supplier shall further be responsible for any damage to any other property caused by such Defect and, at the request of the University, shall remedy or cover the reasonable loss of remedy of such damage. The Supplier shall provide the University with as much prior notice of the proposed time and method of remedying all Defects (and damage, as required) as the circumstances reasonably permit. The Supplier shall comply with any directions of the University in relation to its proposed time and method of completion of remedying the Defects and damage and shall remedy such Defects and damage in accordance with its obligations under these Conditions.

14.2 When, in the opinion of the University, any Defects and damage (if any) the University may have required to be made good shall have been made good, the University shall as soon as reasonably practicable issue a notice in writing that such Defects and damage (if any) have been made good and completion of making good the Defects and damage (if any) shall be deemed for the purposes of the Contract to have taken place on the day named in such notice.

14.3 Where a notice has been issued by the University in accordance with Clause 14.2, or if a Defect and/or damage is remedied by the University in accordance with Clause 14.4 the Warranty Period for such repaired or replaced Equipment shall be deemed to commence from the date of completion of the remedial work by the Supplier as confirmed by the University in the notice referred to in Clause 14.2 or from the date of the remedy of the defect and damage (if any) by the University, as the case may be.

14.4 If due to the fault of the Supplier, any Defect is not remedied within the time period specified by the University after the University has notified the Supplier of the Defect and damage, the University may, without prejudice to any other right or remedy of the University specified in these Conditions or otherwise, and at the risk, cost and expense of the Supplier, remedy the Defect and damage (if any) or procure the remedying of the Defect and damage (if any).

14.5 If, during the Warranty Period, a Defect is discovered in the Equipment which can be rectified by a part replacement, the University may remedy the Defect through making such replacement and the costs of replacement, installation and/or testing shall be paid by the Supplier. The Supplier shall not be liable for Defects or damage to the Equipment arising solely due to faulty installation by the University or its contractors or consultants unless such faulty installation is attributable to advice or instructions given by the Supplier or any of its servants, employees or agents.

14.6 Any amount payable by the Supplier pursuant to Clause 14.4 or 14.5 shall be paid within 45 days of demand by the University.

14.7 To the extent that the Supplier has received the benefit of any warranties from any sub-contractor or vendor of any Equipment which extends beyond the Warranty Period, the Supplier shall, to the extent that the Supplier is legally able to do so, assign the benefit of all such warranties to the University if requested to do so by the University.

14.8 Notwithstanding the expiry of the Warranty Period, the Supplier shall remain liable for the making good of any Defect notified to the Supplier prior to the Warranty Period expiring.

14.9 The University's remedies under this Clause 14 shall be without prejudice to any other rights and remedies of the University under these Conditions and are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the Contract by the Sale of Goods Act, 1893, as amended.

15. **INDEMNITY**

15.1 The Supplier agrees to indemnify, keep indemnified and hold harmless the University, on demand and each of its respective directors, officers, employees and agents and representatives from and against all proceedings, actions, costs (including reasonable legal costs), charges, claims, expenses, damages, liabilities and losses in respect of:

(a) any and all breaches by the Supplier of the terms of the Contract;

(b) any and all torts or breaches of statutory duty committed by the Supplier in connection with the performance or purported performance of the Supplier's obligations under the Contract;

(c) any sickness or injury to or the death of any person whatsoever or in respect of any loss of or damage to any property caused by or arising from any act, neglect, breach of contract, default or omission of the Supplier, its employees, sub-contractors or agents in connection with the performance of its obligations under the Contract; and

(d) any damage caused by or to the Equipment or any defects therein as a result of any act, breach of contract, negligence or omission of the Supplier, its employees, sub-contractors or agents in relation to the performance of the Contract.

15.2 The University shall not be liable to the Supplier for any indirect or consequential loss, loss of profit or loss of or damage to reputation or goodwill or special damages whatsoever that may be suffered by the Supplier in connection with the Contract or as a result of any act or omission by the University with respect to the Contract.

16. **INSURANCE**

16.1 The Supplier shall be required at all times during the term of the Contract to effect and maintain the insurances of the nature and amount set out in the RFT with a reputable insurer and shall immediately notify the University of any material change to its insured status.

The Supplier shall be liable to pay the full amount of any deductibles or excess amounts payable under the policies of insurance referred to in Clause 16.1 in the event of a claim under any of the policies.

17. **TERMINATION**

17.1 The University may terminate the Contract by giving 14 day's written notice to the Supplier at any time before Delivery of the

Equipment, in which case the University shall within 3 months thereafter pay the Supplier the cost the Supplier has incurred to such date and which the Supplier can substantiate up to such date of termination for materials, labour and overheads which the Supplier cannot reasonably use elsewhere *less* any part of the Charges already paid to the Supplier.

17.2 The University may terminate the Contract with immediate effect by written notice to the Supplier on or at any time after the occurrence of one or more of the events specified in Clause 17.3 in relation to the Supplier.

17.3 Each of the following shall be an Event of Default:

(a) **Default**: The Supplier being in material or persistent breach of any of its obligations the Contract and, in the case of a material but not persistent breach, if the material breach is capable of remedy, failing to remedy the breach within 30 days starting on the day after receipt of written notice from the University giving details of the breach and requiring the Supplier to remedy the breach; for the purposes of this Clause 17.3(a) a breach is capable of remedy if time is not of the essence in performance of the obligation and if the Supplier can comply with the obligation within the 30 day period; or

(b) **Insolvency**: (i) a petition is presented or an order is made or a resolution is passed for the winding-up of the Supplier (unless such order or resolution is part of voluntary scheme for the reconstruction or amalgamation of the party as a solvent corporation and the resulting corporation, person, undertakes to be bound by the Contract); or (ii) any action is taken by its officers or any other person for the winding-up, dissolution or striking off of the Supplier; or (iii) the Supplier becomes insolvent or is unable to pay its debts as they fall due or the Supplier stops or threatens to stop making payments generally or declares or threatens to declare a moratorium with respect to all or any part of its debts or enters into any composition or other arrangement with its creditors generally; or (iv) any action is taken by any person to appoint a receiver, administrator, administrative receiver, examiner, liquidator, trustee, or similar officer of the Supplier or any property or assets of the Supplier or any such receiver, administrator, administrative receiver, examiner, liquidator, trustee, or similar officer is appointed; or (v) anything analogous to any of the foregoing events occurs in any applicable jurisdiction; or

(c) **Cessation of Business**: the Supplier ceases or threatens to cease to carry on business; or

(d) **Conflict of interest**: (i) The University becomes aware of any conflict of interest on the part of the Supplier which cannot, in the opinion of the University, be removed by other means; or (ii) The University becomes aware of any registrable interest on the part of the Supplier.

17.4 For the avoidance of doubt the parties acknowledge that failure to deliver the Equipment by the expiry of any required Delivery dates under the Contract shall give rise to a right for the University to terminate the Contract in accordance with Clause 17.3(a).

17.5 The University shall have the right, in addition to any other rights which it has at law, to terminate the Contract immediately and without liability for compensation or damages in circumstances where the University becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Supplier.

17.6 Without prejudice to the foregoing or Clause 24.2, where the University becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, the University reserves the right to require the Supplier to immediately replace such Subcontractor and the Supplier shall comply with such requirement. The Supplier shall include in every sub-contract a right for the Supplier to terminate the sub-contract where any of the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

17.7 **Consequences of Termination**

(a) The termination of the Contract shall be without prejudice to the rights of each of the parties accrued up to the termination date.

(b) The provisions of Clauses 9 (University materials and equipment), 11 (intellectual property), 13 (warranties and representations), 14 (remedying defects), 15 (indemnity), 17 (termination), 18 (consequences of termination), 19 (supplier's personnel), 20 (data protection), 21 (confidentiality), 27 (communications), 28 (governing law) and 29 (general) shall survive the termination of the Contract however it arises, and shall continue to bind the parties or the relevant party (as applicable) and shall continue in full force and effect in accordance with their respective provisions subject to any applicable statute of limitation periods.

(c) The Supplier shall, upon the termination of the Contract, immediately deliver to the University, or at the request of the University destroy, all correspondence, documents, specifications, papers, training manuals, training literature, advertising material, records, invoice books, diaries, work schedules, contracts, licenses, address books, client lists, computer discs containing information relevant to the University, data, artwork, and any other property belonging to the University which may be in its possession or under its control or procurement.

(d) If the University has paid any Charges in advance, the Supplier shall if required by the University repay the portion of those Charges which relates to any period after termination of the Contract and to the Services being terminated.

(e) If the Contract terminates by reason of Clause 17.3(b) if required by the University any receiver, administrator, administrative receiver, examiner, liquidator, trustee, or similar officer of the Supplier shall procure Delivery of the Equipment to the University in which case the University shall pay any then remaining balance of the Charges.

(f) As soon as possible following any notice of termination having been served the Supplier shall provide to the University, such information relating to the Equipment and the Services as is reasonably required in order to secure an orderly handover of the Services (including the Support Services) with minimum disruption to the University.

18. **SUPPORT SERVICES**

18.1 The Supplier shall supply the University with New Releases in machine-readable form together with related amendments to the Documentation. The Supplier may make such New Releases available for downloading over the internet and will promptly notify the University when such downloads are available.

18.2 The Supplier shall notify the University promptly in writing of the issue of any New Version, specifying the following:

(a) the charge for delivery and installation of the New Version (only if the Charges are not inclusive of the cost of same);

(b) the licence fee payable for the New Version (only if the Charges are not inclusive of the cost of same);

(c) in what way the New Version differs from the previous version in terms of functionality, performance and compatibility.

18.3 For the avoidance of doubt, nothing in these Conditions shall oblige the University to take any New Version.

19. **SUPPLIER'S PERSONNEL**

19.1 The Supplier shall procure that all the Supplier's Personnel where any such persons may have unsupervised access to children and/or vulnerable adults in the course of the provision of the Services shall have successfully completed a background check via the Garda Central Vetting Unit (GCVU) and the Garda Vetting process as required by The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016. The Supplier shall provide all such information and documentation as the University may require in this connection and shall comply (and procure compliance by the Relevant Persons) with the University's Garda Vetting/Police Clearance policies and procedures from time to time.

19.2 The Supplier agrees that each member of the Supplier's Personnel shall remain in the employ of the Supplier and nothing in the Contract shall constitute or establish a relationship of agency or employment between any member of the Supplier's Personnel and the University regardless of the degree of supervision that may be exercised over any member of the Supplier's Personnel by the University.

19.3 The Supplier shall comply with all applicable laws and labour standards in respect of the Supplier's Personnel. Without prejudice to the generality of the foregoing the Supplier shall:

(a) comply with all statutory terms and conditions and sector agreements applicable to all workers in Ireland in relation to those members of the Supplier's Personnel engaged in performance under the Contract;

(b) deal with any disciplinary, grievance or other employment issues referred to it by any member of the Supplier's Personnel or the University, in accordance with proper policies and procedures (including disciplinary procedures) and with all applicable laws provided that all such matters shall be dealt with at the Supplier's premises and not at or within the immediate environs of the University's premises (other than with the prior agreement or at the request of the University); and

(c) comply, and procure that each of the Supplier's Personnel complies, with all applicable laws regarding residence permits, work permits and visas.

19.4 The Supplier shall discharge all its obligations as employer in respect of each member of the Supplier's Personnel for its own account and shall indemnify and keep indemnified the University on demand from and against all Personnel Liabilities arising from the Supplier's failure to perform and discharge any such obligation and against all Personnel Liabilities arising out of or as a result of: (a) any act or omission by the Supplier with respect to the Supplier's Personnel; (b) all emoluments and outgoings in relation to each member of the Supplier's Personnel (including without limitation all wages, bonuses, PAYE, pay related social insurance contributions, pension contributions and otherwise); (c) any claim or proceedings threatened or instituted against the University by any member of the Supplier's Personnel whether arising under contract, common law or statute in relation to that person's employment by the Supplier in connection with the Contract including, but not limited to, claims under the Unfair Dismissals Acts 1977-2007, Redundancy Payments Acts, 1967 to 2007, the Industrial Relations Acts 1946-2004, the Organisation of Working Time Act, 1997, Minimum Notice and Terms of Employment Acts, 1973 to 2001, Terms of Employment (Information) Acts, 1994 to 2001, Employment Equality Acts, 1998 to 2008, Payment of Wages Act, 1991 and the Protection of Employees (Fixed-Term Work) Act 2003; and (d) any statement communicated to or action done by the Supplier any member of the Supplier's Personnel which has not been agreed in advance by the University in writing.

19.5 The University may request the Supplier to remove from performance under the Contract any of the Supplier's Personnel; such right not to be unreasonably exercised.

19.6 The Supplier acknowledges and agrees that it is not intended that there should be transferred to the University the obligations of any person as employer arising under any contract of employment, in consequence of, or in connection with, the entry by the parties into, or the performance by them of their obligations under, the Contract, or the termination of the Contract, or the transfer to the University of any function to be performed by the Supplier under the Contract. If, notwithstanding that intention, any such obligations are transferred to the University by operation of law (whether pursuant to the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) or otherwise), then the Supplier shall indemnify the University upon request against all Losses which may be suffered or incurred by the University arising out of or in connection with any such transfer, or any contract of employment so transferred to the University, or the termination of any such contract of employment by the University subsequent to any such transfer (which the University shall be free in its absolute discretion to terminate without prejudice to its rights under this Clause).

19.7 The Supplier shall indemnify and keep indemnified the University on demand from and against any Losses suffered or incurred by the University (or any of its Personnel) arising out of or in connection with any personal injury to (including death) or damage to any property caused by any act or omission by any of the Supplier's Personnel.

19.8 In this Clause 19:

"**Personnel Liabilities**" means all claims (including but not limited to claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, sexual orientation, race, religion, belief or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers and fixed term employees, and any claims whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including without limitation any investigation by the Equality Authority, the National Employment Rights Authority or any other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from any such investigation) and legal costs and expenses.

20. **DATA PROTECTION**

20.1 In these Conditions the following terms shall have the meanings respectively ascribed to them:

"**Authorised Person**" means any of the persons occupying the roles in the University identified in that specific regard in the RFT or the Order;

"**Data**" means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with the University (including but not limited to his employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of

any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the University provided under the Contract and includes any Personal Data;

"**Data Controller**" has the meaning given under the Data Protection Laws;

"**Data Processor**" has the meaning given under the Data Protection Laws;

"**Data Protection Laws**" means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "**General Data Protection Regulation**"), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland;

"**Data Subject**" has the meaning given under the Data Protection Laws;

"**Data Subject Access Request**" means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

"**Personal Data**" has the meaning given under Data Protection Laws;

"**Processing**" has the meaning given under the Data Protection Laws;

20.2 The Supplier shall comply with all applicable requirements of the Data Protection Laws.

20.3 The Parties acknowledge that for the purposes of the Data Protection Laws, the University is the Data Controller and the Supplier is the Data Processor in respect of Data which is Personal Data. The RFT sets out the scope, nature and purpose of Processing by the Supplier, the duration of the Processing and the types of Personal Data and categories of Data Subject.

20.4 Without prejudice to the generality of Clause 20.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under the Contract:

(a) process that Personal Data only on the written instructions of the University which instructions shall be: (A) documented in writing; and (B) given by an Authorised Person;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the University, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all Personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) it shall not sell, transfer, disclose or otherwise allow access to any Data to any party other than its Personnel, save where the prior written consent of the University has been obtained;

(e) it shall not copy or maintain any Data on any other systems, application or other medium other than as required for the provision of the Services;

(f) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the University has been obtained and the following conditions are fulfilled:

(i) appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) the Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Supplier complies with reasonable instructions notified to it in advance by the University with respect to the processing of the Personal Data;

20.5 The Supplier shall promptly notify the University if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the University's obligations under the Data Protection Laws and provide full co-operation and assistance to the University in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

20.6 The Supplier shall promptly but not later than 24 (twenty-four) hours after becoming aware of it notify the University of any unauthorised access to, or unauthorised use, alteration, disclosure, accidental loss or destruction of, any Data in the custody of the Supplier (each a "**data breach**").

20.7 In the event of any data breach, the Supplier shall:

(a) take prompt action at its own expense on the instruction of the University to remedy the cause of the data breach;

(b) bear the costs of investigation into said data breach;

(c) promptly, at its own expense, provide the University on request with all information required to fulfil its obligations, as data controller, under Data Protection Laws; and

(d) promptly, at its own expense, assist the University in complying with its obligations under Articles 32 to 36 of the General Data Protection Regulation.

20.8 The Supplier shall assist the University in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.

20.9 At any time during the course of the provision of the Services, or upon termination or expiry of the Contract, the Supplier shall, upon the request of the University, immediately securely deliver to the University or destroy all Data as may be requested by the University and shall certify such destruction or delivery in writing to the University on request from time to time.

20.10 The Supplier shall permit the University, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Supplier's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Supplier in any way for the provision of the services. The Supplier shall comply with all

reasonable directions of the University arising out of any such inspection, audit or review.

20.11 The Supplier shall fully comply with, and implement policies which are communicated or notified to the Supplier by the University from time to time.

20.12 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 20 and allow for inspections and contribute to any audits by the University or the University's designated auditor.

20.13 The Supplier shall:

(a) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;

(b) to ensure that a back-up copy of any and all such Personal Data is made at such frequency as is required by Good Industry Practice and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and

(c) in such an event and if attributable to any default by the Supplier or any permitted sub-contractor, promptly restore the Personal Data at its own expense or, at the University's option, reimburse the University for any reasonable expenses it incurs in having the Personal Data restored by a third party.

20.14 The University does not consent to the Supplier appointing any third party processor of Personal Data under the Contract.

20.15 The Supplier shall indemnify and keep indemnified the University on demand from time to time from and against all Losses suffered or incurred by the University arising out of or in connection with any breach by the Supplier of its obligations under this Clause 20.

20.16 The provisions of this Clause 20 shall survive termination and or expiry of the Contract for any reason.

21. **CONFIDENTIALITY**

21.1 In this Clause 21.1, "**Confidential Information**" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly and whether specifically designated as 'confidential' or which ought reasonably be regarded as confidential) under or in connection with the Contract by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") including, without limitation, information relating to the Disclosing Party's products, services, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.

21.2 During the term of the Contract and after termination or expiration of the Contract for any reason the Receiving Party:

(a) will not use Confidential Information for a purpose other than the performance of its obligations under the Contract;

(b) will not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party other than in accordance with Clauses 21.3 and 21.4; and

(c) shall make every effort to prevent the unauthorised use or disclosure of Confidential Information;

21.3 During the term of the Contract the Receiving Party may disclose Confidential Information to any of its directors, officers and employees (a "**Recipient**") to the extent that disclosure is reasonably necessary for the purposes of the Contract. The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under the Contract as if the Recipient was a party to the Contract.

21.4 The obligations in this clause shall not apply to the extent that:

(a) the disclosure of Confidential Information is required by the law of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction;

(b) the information is disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of that party;

(c) the information has come into the public domain through no fault of that party;

(d) the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid;

(e) the information was obtained by the Receiving Party from a third party who was free to divulge the same;

(f) the Disclosing Party has given prior written approval to the Receiving Party in respect of the disclosure, such approval not to be unreasonably withheld or delayed; or

(in the case of the University) by request of any person or body or authority whose request the University or persons associated with the University (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

21.5 In circumstances where the University is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the University receiving a request for information related to the Contract, the University shall consult with the Supplier in respect of the request. The Supplier shall specifically identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity, and shall state the reasons for this sensitivity. The University will consult the Supplier about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The University accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

21.6 The obligations of both parties as to disclosure and confidentiality shall continue in force notwithstanding the termination of the Contract.

22. **LEGAL OPINION**

22.1 Without limiting Clause 13.1, the Supplier shall, if required by the University as set out in the RFT, at the Supplier's expense, procure the provision of a written legal opinion of a qualified lawyer certifying that:

(a) the Supplier, and in the case of any bond or guarantee to be procured by the Supplier the relevant surety, has all requisite corporate power to execute, deliver and perform its obligations under the Contract and any guarantee or bond which the University requires the Supplier to procure;

(b) the execution, delivery and performance of the Contract and any guarantee or bonds which the University requires the Supplier to procure have been duly authorised by appropriate corporate action; and

(c) the Contract and any guarantee or bonds that the University requires the Supplier to procure constitute legally binding obligations on the Supplier or the surety as the case may be.

22.2 Any legal opinion requested by the University in accordance with Clause 22.1 shall have such form and content as shall be approved in advance in writing by the University.

23. **FORCE MAJEURE**

23.1 If a party (the "**Affected Party**") is prevented, hindered or delayed from or in performing any of its obligations under the Contract by a Force Majeure Event:

(a) the Affected Party's obligations under the Contract are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;

(b) as soon as reasonably possible after the start of the Force Majeure Event the Affected Party shall notify the other party (the "**Other Party**") in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under the Contract;

(c) if the Affected Party does not comply with Clause 23.1(b) it forfeits its rights under Clause 23.1(a);

(d) the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under the Contract; and

(e) as soon as reasonably possible after the end of the Force Majeure Event the Affected Party shall notify the Other Party in writing that the Force Majeure Event has ended and resume performance of its obligations under the Contract.

23.2 If the Force Majeure Event continues for more than 30 days starting on the day the Force Majeure Event starts, a party may terminate the Contract by giving not less than 14 days' written notice to the Other Party after the expiry of the said 60 day period, provided that such notice shall be deemed not to have been given in the event that notice of cessation of the Force Majeure given pursuant to Clause 23.1(e) is received by the Other Party prior to the expiry of the 14 days' notice.

23.3 In this Clause 23, "**Force Majeure Event**" means an event beyond the reasonable control of the Affected Party including, without limitation, strike, lock-out, labour dispute, act of God, war, riot, civil commotion, act of terrorism, military operations, malicious damage, compliance with a law or governmental order, rule, regulation or direction, restrictions due to the spread or possible spread of disease among humans or animals, accident, breakdown of plant or machinery, fire, flood.

24. **ASSIGNMENT AND SUB-CONTRACTING**

24.1 The University shall be entitled to assign, transfer, or novate the Contract or any rights or obligations under the Contract at its discretion.

24.2 The Supplier shall not assign, transfer, sub-contract, create any trust over, charge or otherwise encumber or deal in any manner with the Contract or any rights or obligations under the Contract without the prior consent in writing of the University.

24.3 For the avoidance of doubt, the Supplier acknowledges that it will remain primarily responsible to the University for the provision of the Equipment and the Services, notwithstanding any permitted sub-contracting of its obligations.

25. **PUBLICITY**

The Supplier shall not, without the prior written consent of the University, advertise or publicly announce that it is providing services to the University.

26. **CONFLICTS, REGISTERABLE INTERESTS AND CORRUPT GIFTS**

26.1 The Supplier confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any proposed subcontractor nor agent as the case may be has any conflicts in relation to the Equipment and its obligations undertaken under the Contract. The Supplier hereby undertakes to notify the University immediately should any conflict or potential conflict of interest come to its attention during the currency of the Contract and to comply with the University's directions in respect thereof. In the event of such notification, the University shall have the right (in addition to any other rights which it has at law) to terminate the Contract immediately and without liability for compensation or damages.

26.2 Any registrable interest involving the Supplier (and any subcontractor or agent as the case may be) and the University, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the University immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Supplier shall comply with the University's directions in respect thereof to the satisfaction of the University. In the event of such disclosure, the University shall have the right (in addition to any other rights which it has at law) to terminate the Contract immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act 1995 (as amended) a copy of which is available on request.

26.3 The Supplier shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 28.3 or the commission of any offence by the Supplier, any subcontractor, agent or employee under the Prevention of Corruption Acts 1889 to 2005 or Criminal Justice (Corruption Offences) Act, 2018 shall entitle the University to terminate the Contract immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Supplier of the amount or value of any such gift, consideration or commission.

27. **COMMUNICATIONS**

27.1 **Service**: Notices and other communications under or in connection with the Contract may be given in writing by hand, by ordinary pre-paid post, by facsimile or by e-mail, save that service of any notice of any claim, dispute, termination, breach or legal proceedings in connection with the Contract shall not be made by e-mail. Any such notice, if so given, shall be deemed to have been served:

(a) if sent by hand, when delivered;

(b) if sent by post, one business day after posting;

(c) if sent by facsimile, upon production by the sender's facsimile transmission system of a receipt confirming transmission of the communication to the correct facsimile number; and

(d) if sent by e-mail, six hours after sending provided the sender has not received notice of failed or delayed delivery.

28. **GOVERNING LAW AND JURISDICTION**

28.1 **Governing Law**: The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Irish law.

28.2 **Jurisdiction**: The Irish courts shall have exclusive jurisdiction to hear, determine and settle any dispute arising out of or in connection with

the Contract or any related non-contractual obligations and the parties submit to the exclusive jurisdiction of the Irish courts for that purpose.

28.3 **Convenient Forum**: The parties waive any objection to the Irish courts on grounds that they are an inconvenient or inappropriate forum to settle any such dispute.

29. **GENERAL**

29.1 **OGP**: The Supplier agrees that any information relating to the Contract and/or the performance of the Contract may be passed by the University to the Office of Government Procurement (OGP) and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.

29.2 **Set-off**: The University shall be entitled to set-off any matured obligation owed by the Supplier to the University under the Contract (including, without limitation, the amount of any defects in the Equipment, and/or the amount of any claim or loss and/or expense of any damage which has been incurred (or is likely to be incurred) by the University by reason of any breach of, or failure to observe the provisions of the Contract) against any obligation (whether matured or unmatured) owed by the University to the Supplier. If an obligation is unascertained or unliquidated, the University may in good faith estimate that obligation and set off in respect of the estimate subject to the relevant party accounting to the other when the obligation is ascertained or liquidated. The University will not be obligated to pay any amounts to the Supplier under the Contract so long as any sums which are then due by the Supplier to the University under the Contract remain unpaid, and any such amounts which otherwise would be due will fall due from the University only if and when the Supplier has paid all such sums.

29.3 **Severability**: If the whole or any part of a provision of these Conditions is or becomes illegal, invalid or unenforceable, that will not affect the legality, validity or enforceability of the remainder of the provision in question or any other provision of these Conditions

29.4 **Binding on Successors**: These Conditions and all of its provisions shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors and permitted assigns.

29.5 **Standard form Documents**: The parties recognize that printed form purchase orders, invoices and other commonly used form documents by the Supplier relating to the performance of any obligations hereunder may contain terms which conflict with one or more terms of these Conditions. In case of any such conflict, the terms of these Conditions shall prevail.

29.6 **Costs**: Each party will pay its own costs in connection with or incidental to the preparation, negotiation and execution of the Contract.

29.7 **No Partnership or Agency**: Nothing in these Conditions shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent, between the parties, and neither of the parties shall have any right or authority to act on behalf of the other or to bind the other in any way.

29.8 **Language**: These Conditions are made only in the English language. If there is any conflict in meaning between the English language version of these Conditions and any version or translation of these Conditions in any other language, the English language version shall prevail. Each document and communication referred to in this agreement or to be delivered under it shall be in the English language or, if not, accompanied by an English translation of it, certified as accurate by an officer of the party issuing that document or communication; and in the case of conflict between English language version and any other version, English language version shall prevail.

29.9 **Sole and Entire Agreement**: The express terms of the Contract together with the Purchase Order (and all attachments thereto including the Equipment Specification) constitute the sole and entire agreement between the parties in relation to the supply of the Equipment and the Services and supersedes all prior written and oral arrangements, understandings, representations, warranties and agreements between them in that regard (if any).

29.10 **Waivers, Rights Cumulative**: Each of the rights of each party under the Contract may be exercised as often as is necessary, is cumulative and not exclusive of any other rights which that party may have under the Contract, law or otherwise; and may be waived only in writing and specifically. Delay by a party in exercising, or the non-exercise by a party of, any such right will not constitute a waiver of that right.

29.11 **Amendments**: Any amendment to the Contract must be in writing and duly signed for and on behalf of each of the University and the Supplier.