

Dated

20[XX]

UNIVERSITY OF ULSTER (1)

and

[XXXXX] (2)

CONTRACTUAL AGREEMENT

SPECIFIED TERMS

GENERAL CONTRACT DETAILS	
Tender Title:	[INSERT TENDER TITLE]
Contract Reference:	[INSERT PROJECT/CONTRACT REFERENCE]
Contract Start Date:	[INSERT DATE]
Expiry of Initial Term:	[INSERT DATE]
Term and Extension:	<p>The Initial Term shall commence on the Contract Start Date.</p> <p>OPTION 1¹</p> <p>[The University may extend the Term beyond the Initial Term by a further period or periods of up to [PERIOD – months/years] (the “Extension Period”). If the University wishes to extend the Initial Term, it shall give the Supplier at least one (1) month’s written notice of such intention before the expiry of the Initial Term or Extension Period.</p> <p>If the University gives such notice then the Term shall be extended by the period set out in the notice.</p> <p>If the University does not wish to extend the Term beyond the Initial Term, the Agreement shall expire on the expiry of the Initial Term and the provisions of clause 33 (Obligation to Assist on Re-Tendering) [and clause 9 of Schedule 1 (Termination Services)²] shall apply.</p> <p>OPTION 2³</p> <p>[Upon expiry of the Initial Term, the Term shall be extended automatically without notice by a further period or periods of up to [PERIOD – months/years] (the “Extension Period”). If the University does not wish for the Term to be extended beyond the Initial Term, it shall give the Supplier at least one (1) month’s written notice of such intention before the expiry of the Initial Term.</p> <p>If the University gives such notice then the Term shall not be extended by the Extension Period and the Agreement shall expire on the expiry of the Initial Term, whereupon the provisions of clause 33 and clause 9 of Schedule 1 shall apply.</p>

¹ **Drafting Note:** please select Option 1 and delete Option 2 if the contract is for an Initial Term with the option to extend for a further Extension Period upon one month’s prior written notice. This means that the contract will not automatically renew and notice will need to be given to extend the Term – in the absence of such notice the contract will terminate. If the University does not typically provide advanced notice in these circumstances it would be more prudent to select the Option 2

² **Drafting Note:** please include reference to clause 10 of Schedule 1 only if the contract involves the supply of Services.

³ **Drafting Note:** please select Option 2 and delete Option 1 above if the contract automatically renews from the Initial Term into the Extension Period without any notice required

PARTIES	
University:	The University of Ulster (otherwise known as Ulster University), Royal Charter company with company number RC000726, having its principal administrative offices at Cromore Road, Coleraine, Northern Ireland, BT52 1SA (the “ University ”).
University’s Contract Manager:	Name: [INSERT NAME] Address: [INSERT ADDRESS] Telephone: [INSERT TELEPHONE] Email: [INSERT EMAIL]
University’s Authorised Representative(s):	Name: [INSERT NAME] Address: [INSERT ADDRESS] Telephone: [INSERT TELEPHONE] Email: [INSERT EMAIL]
Supplier:	[INSERT NAME OF SUPPLIER] with company number [INSERT COMPANY NUMBER] having its registered office at [INSERT ADDRESS OF SUPPLIER] (the “ Supplier ”).
Supplier’s Authorised Representative:	Name: [INSERT NAME] Address: [INSERT ADDRESS] Telephone: [INSERT TELEPHONE] Email: [INSERT EMAIL]
SCOPE AND DELIVERABLES	
[Supplies] AND/OR [Services]⁴:	[SHORT DESCRIPTION OF THE SUPPLIES AND/OR SERVICES SUPPLIED UNDER THE CONTRACT], as further detailed in Schedule 3 (Specification).
[Service Commencement Date:]	[DATE]
[Initial Supplies Delivery Date:]	[DATE].
Management Reports:	The Supplier shall provide the Management Reports in the form and at the intervals set out below: <ul style="list-style-type: none"> • Type: [DETAILS⁵] • Contents [DETAILS]

⁴ **Drafting Note:** please amend as applicable – refer to “Services” only if the contract does not involve Supplies (and vice versa), and include “Services and Supplies” if the contract involves the supply of both.

⁵ **Drafting Note:** e.g. monthly/quarterly/annual review meeting.

		<ul style="list-style-type: none"> Frequency [DETAILS⁶] Circulation List: [DETAILS].
Performance Meetings:	Review	<p>Performance Review Meetings shall be held [INSERT DETAILS]⁷.</p> <p>The quorum at each Performance Review Meetings shall be [NUMBER].</p> <p>The agenda for each Performance Review Meetings shall cover issues including, but not limited to:</p> <ul style="list-style-type: none"> (a) review of the Management Report submitted by the Supplier, including: <ul style="list-style-type: none"> (i) assessment of contract performance against targets and KPIs; (ii) proposals for the operation of the contract over the next [12 months]; (iii) proposals for the introduction of new operational efficiencies and savings; (iv) revised performance targets; (v) confirmation of contract budget for the following [12 months]; and (b) [review of Hourly Rates]⁸. <p>The University's Contract Manager, the University's Authorised Representative and relevant Supplier's Key Personnel shall, at each meeting, present the previously circulated Management Reports in the format set out in the "Management Reports" section of the Specified Terms.</p> <p>[At the Performance Review Meetings [each year], the parties shall review the Hourly Rates and agree whether it is appropriate and necessary to make any changes thereto, provided that in no circumstances shall the Hourly Rates increase by a greater percentage amount than the percentage increase in the equivalent staff pay rate grades of University staff (if any)].</p>
Consistent Failure:		<p>[For the purposes of this Agreement, Consistent Failure shall mean:</p> <ul style="list-style-type: none"> (a) a failure rate of at least [INSERT NUMBER]% in meeting: <ul style="list-style-type: none"> (i) [[INSERT NUMBER] or more of the Service Levels labelled "Red" in a rolling [INSERT NUMBER] month period; or

⁶ **Drafting Note:** e.g. prior to the end of each month/at the end of each quarter/two months before the end of each Contract Year.

⁷ **Drafting Note:** decide upon the required frequency of meetings (e.g.. monthly, quarterly, or annual)

⁸ **Drafting Note:** please delete if not applicable, e.g. where the contract involves the provision of supplies only where hourly rates don't apply.

	<p>(ii) [INSERT NUMBER] or more Service Levels labelled “Green” in a rolling [INSERT NUMBER] month period.]</p> <p>OR</p> <p>(iii) [[INSERT NUMBER] or more Service Levels in a rolling [INSERT NUMBER] month period.]]</p> <p>AND/OR</p> <p>(iv) [the Supplier being liable to pay £[INSERT FIGURE] to the University in Service Credits in respect of [two consecutive months].</p> <p>AND/OR</p> <p>(v) [the University serving two Remediation Notices in a rolling 36 month period or three Default Notices in a rolling 18 month period].</p>
[KPIs:]⁹	<p>[The University shall at least once in every period of twelve months during the Term and on termination of the Agreement:</p> <p>(a) assess the Supplier’s performance under the Agreement against the KPIs which it regards as most material to performance of the agreement in accordance with the Specification; and</p> <p>(b) publish the information required under the Act relating to that assessment in the contract performance notice in line with its Reporting Obligations.</p>
[Variations]¹⁰:	<p>Variation – General:</p> <p>The Supplier acknowledges that the [Supplies] [and] [Services] ordered by the University throughout the Term are subject to change and demand may vary due to [INCLUDE DETAILS OF FACTORS THAT MAY NECESSITATE VARIATIONS, E.G. ADDITION OR DECOMMISSION OF CERTAIN UNIVERSITY PREMISES]¹¹ (“Variation”).</p> <p>The Supplier and the University agree that the terms of the Agreement may require amendment as a result of such Variation, which shall include (but not limited to) Schedule 3 (Specification), Schedule 4 (Supplier’s Solution), and Schedule 5 (Charges and Payment).</p> <p>The Supplier and the University agree that any such Variation shall be determined in accordance with the procedure set out in Schedule 12 (Variation).</p>

⁹ **Drafting Note:** please ensure that you only include this section relating to KPI’s if the contract’s estimated value is £5million (including VAT) or above.

¹⁰ **Drafting Note:** please include this section and all associated rows regarding Variations only if it is anticipated that the quantities/levels of Suppliers and/or Services are subject to fluctuations. Note that Schedule 12 which is cross-referred to in this section sets out the procedure for agreeing any Variations. You should ensure that you complete the placeholders in [square brackets] in as much detail as possible. When drafting this section of the Specified Terms, please refer to document G04 for guidance

¹¹ **Drafting note:** please clearly set out the circumstances in which variations to Supplies and/or Services may be necessary during the Term. Please refer to document G04 for guidance

	<p>Price Adjustment Mechanism:</p> <p>Pursuant to the procedure set out in Schedule 12 (Variation), the amended Charges shall be calculated as follows:</p> <p>[PRICE ADJUSTMENT MECHANISM DETAILS]¹².</p> <p>Any figure calculated in accordance with the price adjustment mechanism set out above shall be adjusted to ensure the amended Charges have been calculated on the same basis by which they were first calculated for inclusion within Schedule 5 (Charges and Payment) by reference to the costs submitted within the Supplier's Tender and with consideration to the following relevant matters in respect of the Variation Request:</p> <p>(a) [DETAILS]¹³.</p> <p>[Variation Request – Additional Details:</p> <p>[Not Applicable]</p> <p>OR</p> <p>[In addition to the details required pursuant to paragraph 3.2 of Schedule 12, each Variation Request shall also contain [INSERT DETAILS SPECIFIC TO THE CIRCUMSTANCES NECESSITATING A VARIATION]]¹⁴</p>
BUSINESS CONTINUITY	
<p>Business Continuity Plan:</p>	<p>OPTION 1¹⁵</p> <p>[The University and the Supplier shall, within [30] Business Days from the date of the Agreement being entered, agree a business continuity plan which sets out the procedures to be adopted by the Supplier in the event that an incident or occurrence of any nature threatens the continued delivery of any aspect of its obligations to the University (including the procedures to be taken by the Supplier in planning and providing for any such event).</p> <p>The Supplier shall at all times comply with the relevant provisions of the business continuity plan.</p> <p>Following the declaration of a Major Incident, the Supplier shall:</p> <p>(a) continue to provide the affected Supplies and/or Services (as applicable) to the University in accordance with the terms of the business continuity plan; and</p>

¹² **Drafting Note:** please refer to document G04 for guidance.

¹³ **Drafting Note:** please refer to document G04 for guidance.

¹⁴ **Drafting Note:** any details relevant to the specific circumstances of the Variation should be included in this section. If all relevant details are already covered by paragraph 3.2 of Schedule 12, this section can be removed. Please refer to document G04 for further guidance.

¹⁵ **Drafting Note:** please include Option 1 if it is intended that the parties will agree to implement a business continuity plan as part of the contract. If not, please delete Option 1 wording and select Option 2 (Not applicable). Please refer to the drafting note below regarding Services.

	<p>(b) restore the affected Supplies and/or Services (as applicable) to normal within the period laid out in the business continuity plan.]</p> <p>AND (IF SERVICES APPLY)</p> <p>[In the event of a Major Incident declared by the Supplier and to the extent that the Supplier complies fully with the terms set out above (and the reason for the declaration of a Major Incident was not breach of any of the other terms of this Agreement on the part of the Supplier), the Service Levels to which the affected Services are to be provided during the continuation of the Major Incident shall not be the Service Levels as referred to in the Specification but shall be the service levels set out in the business continuity plan or, if none, the best service levels which are reasonably achievable in the circumstances.]¹⁶</p> <p>OPTION 2</p> <p>[Not applicable.]</p>
FORCE MAJEURE – ADDITIONAL TERMS	
Continuation of Obligations:	Subject to clause 29.3, and in accordance with the provisions of clause 31, if either party is unable to perform its obligations due to a Pandemic Event, continuation of the obligations shall take place [NUMBER] working days from and including the date of service of the Affected Party's Pandemic Event Cessation Notice in respect of that Pandemic Event.
Termination:	In accordance with the provisions of clause 31, and notwithstanding the provisions of clause 29.2, if, due to a Pandemic Event, either party is unable to continue to complete its obligations by [LONG-STOP DATE], the University reserves the right to terminate this agreement at any time after that date, in accordance with clause 26 (Termination for Breach).
RISK AND INSURANCE	
Limitation of Liability:	<p><u>Supplier's Liability:</u></p> <p>Subject to the provisions of clause 20.5 of the General Conditions, the Supplier's total aggregate liability:</p> <p>(a) in respect of the indemnities given by the Supplier in clause 23.13, 27.4 and [Schedule 8 (TUPE)]¹⁷ is unlimited;</p> <p>1.1 [in respect of Service Credits, is limited, in each Contract Year, to [20%]¹⁸ of the Charges that are</p>

¹⁶ **Drafting Note:** Please include this paragraph if (a) Services are being supplied under the contract; and (b) the business continuity planning applies.

¹⁷ **Drafting Note:** please delete reference to Schedule 10 if TUPE does not apply (e.g. if the contract relates to Supplies only)

¹⁸ **Drafting Note:** a 20% service credits liability cap is an indicator of what is fair and reasonable in most contracts of this kind, however please consider the size of the project and whether it would be reasonable and proportionate to increase the cap in that context.

	<p>payable by the University in the applicable Contract Year]¹⁹;</p> <p>(b) for all loss of or damage to the University's Premises, property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to the University Data or any other data) of the University caused by the Supplier's Default shall in no event exceed [£5,000,000] per incident (subject to indexation) or such higher amount as the Supplier has applicable insurance cover for;</p> <p>(c) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, (including loss or damage to the University Data or any other data) shall in no event exceed [£5,000,000] in each Contract Year or, if greater:</p> <p style="padding-left: 40px;">(i) 120% of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises; or</p> <p style="padding-left: 40px;">(ii) such higher amount as the Supplier has applicable insurance cover for.</p> <p><u>University's Liability:</u></p> <p>Subject to the provisions of clause 20.5 of the General Conditions, the University's total aggregate liability in respect of all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the University shall remain fully liable), shall in no event exceed [£500,000] in each Contract Year.</p>
Required Insurance: ²⁰	<p>The Supplier shall, in accordance with clause 21 of the General Conditions, maintain the following policies of insurance²¹:</p> <p>(a) public liability insurance with a limit of indemnity of not less than [£5,000,000] in relation to any one claim or series of claims;</p> <p>1.2 to the extent required by law, employer's liability insurance with a limit of indemnity of not less than [£5,000,000] in relation to any one claim or series of claims; [and]</p> <p>1.3 [professional indemnity insurance with a limit of indemnity of not less than [£1,000,000] in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in</p>

¹⁹ **Drafting Note:** please delete (b) if Service Credits do not apply to the contract.

²⁰ **Drafting Note:** please refer to document G08 Procurement and Commercial Guideline for guidance on insurance levels for works professional services.

²¹ **Drafting Note:** please contact the Tax & Pensions Manager for guidance or any queries regarding required insurance levels in square brackets.

	the provision of the Services and/or Supplies hold and maintain appropriate cover.]] ²²
TUPE	
Relevant Transfers:	<p>[The parties agree that the provisions of Schedule 8 (TUPE) shall apply to any Relevant Transfer (as defined therein) of staff under this Agreement].</p> <p>[The Supplier has calculated the Charges on the basis that [NUMBER] Transferring Employees will transfer and [NUMBER] Incumbent Employees [NUMBER] will transfer on the Effective Date (as defined in Schedule 8) and that these employees will continue to be engaged by the Supplier for the Term. The parties will meet within 3 months of the Effective Date and within 3 months of the start of each Contract Year (from the 2nd Contract Year onwards) to discuss the actual composition of staff employed by the Supplier to deliver the Services:</p> <p>(a) in the event that the number of Transferring Employees and Incumbent Employees employed by the Supplier is the same as or greater than the number envisaged by the Supplier and reflected in the Charges, no change will be made to the Charges; and</p> <p>(b) In the event that the number of Transferring Employees and Incumbent Employees employed by the Supplier is less than the number envisaged by the Supplier and reflected in the Charges then the Charges will be reduced to reflect any difference between the expected employment costs included in the Charges relating to the employment of the Transferring Employees and Incumbent Employees (who are no longer employed by the Supplier) and the actual employment costs expected to be incurred by the Supplier in respect of any equivalent replacement employees.</p>
[Incumbent Employer]	<p>For the purposes of Schedule 8, "Incumbent Employer" shall mean [COMPANY NAME] a private limited company incorporated in [COUNTRY] with company number [COMPANY NUMBER] and registered office address of [ADDRESS].]</p> <p>OR</p> <p>[Not Applicable]</p>
DATA PROTECTION	
Roles of the Parties²³:	<p>The parties acknowledge that for the purposes Data Protection Legislation and pursuant to clause 23 of the General Conditions:</p> <p>(a) [The University shall be the Controller in respect of the Personal Data and Processing activities set out in Schedule 11Part 1 of Schedule 11;]</p>

²² **Drafting Note:** please remove sub-clause (c) if professional indemnity insurance is not relevant.

²³ **Drafting Note:** for guidance and assistance with populating this section of the Specified Terms and completing the Data Processing Particulars in Schedule 11, please contact the Data Protection & Information Compliance Unit (gdpr@ulster.ac.uk) at the earliest opportunity.

	<p>(b) [The Supplier shall be the Controller in respect of any Personal Data and processing activities set out in Part 2 of Schedule 11;]</p> <p>(c) [the Supplier and the University shall act as joint controllers in respect of the Personal Data and processing activities set out in Part 3 of Schedule 11]</p> <p>(d) [The Supplier and the University shall act as independent controllers in respect of any Personal Data pursuant to this Agreement and shall, in accordance with clause 23.14 of the General Conditions, work together to put in place a data sharing agreement to ensure compliance with the Data Protection Legislation.]</p>
APPLICABLE SCHEDULES	
Schedules:	<p>The following Schedules shall apply in this Agreement²⁴:</p> <ol style="list-style-type: none"> 1. [Schedule 1: Terms and Conditions – Services] 2. [Schedule 2: Terms and Conditions – Supplies]. 3. Schedule 3: Specification 4. Schedule 4: Supplier's Solution 5. Schedule 5: Charges and Payment 6. [Schedule 6: Exit Plan] 7. [Schedule 7: Contract Mobilisation Plan] 8. [Schedule 8: TUPE] 9. [Schedule 9: Commercially Sensitive Information] 10. Schedule 10: Key Personnel 11. Schedule 11: Data Processing Particulars 12. [Schedule 12: Variation]

1. This Agreement is made up of the following:

- (a) Schedule 3 (Specification)
- (b) Specified Terms
- (c) General Conditions
- (d) Schedule 1 (Terms and Conditions – Services) and Schedule 2 (Terms and Conditions – Supplies)
- (e) Schedules specified in the Specified Terms (not including Schedule 1 (Terms and Conditions – Services), Schedule 2 (Terms and Conditions - Supplies, or Schedule 3 (Specification).

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list. For the avoidance of doubt, where multiple documents are listed under the same sub-clause, they shall have equal priority, unless expressly stated otherwise.

²⁴ **Drafting Note: please include only those schedules that apply to the contract.** Schedules which are optional are in square brackets and highlighted in yellow. Please ensure that you review each schedule and insert any required information in accordance with the drafting notes.

THIS AGREEMENT has been entered into on the date stated at the beginning of it.

Signed for and on behalf of **UNIVERSITY OF ULSTER**

Signature:

Name:

Position:

Signed for and on behalf of **[NAME OF SUPPLIER]**

Signature:

Name:

Position:

GENERAL CONDITIONS

AGREED TERMS

2. DEFINITIONS AND INTERPRETATION

2.1 The definitions and rules of interpretation in this clause apply in this Agreement:

“Act”	means the Procurement Act 2023.
“Affiliate”	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under indirect common Control with, that body corporate from time to time.
“Agreement”	the agreement between the University and the Supplier for the supply of the Services and/or Supplies (as applicable) in accordance with the Specified Terms, these Conditions and any Schedules.
“Associated Company”	any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.
“Associated Person”	means someone who the Supplier relied upon to satisfy the conditions of participation in the competitive procedure pursuant to which this Agreement was awarded (that is not a guarantor), for example, a Key Sub-contractor.
“Best Practice”	Industry the standards which fall within the upper quartile in the relevant industry for the provision of comparable services and/or supplies which are substantially similar to the Services and/or Supplies or the relevant part of them, having regard to factors such as the nature and

		size of the parties, the service levels (if applicable), the term, the pricing structure and any other relevant factors.
"Bribery Act"		the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
"Business Day"		a day other than a Saturday, Sunday or public holiday in Northern Ireland, when banks in Belfast are open for business.
"Catastrophic Failure"		means: <ul style="list-style-type: none"> (a) a failure by the Supplier for whatever reason to implement a business continuity plan successfully in line with the requirements set out in the Specified Terms (if applicable); or (b) a failure by the Supplier for whatever reason to support the University in the implementation of its business continuity plan successfully (if applicable); or (c) any action by the Supplier, whether in relation to the performance of its obligations under this Agreement which, in the reasonable opinion of the University's Contract Manager, has or may cause significant harm to the reputation of the University.
"Change"		any change to this agreement, as specified in clause 16.
"Change Note"	Control	has the meaning given to it in clause 16.
"Change Procedure"	Control	the procedure for changing this agreement, as specified in clause 16.
"Charges"		the charges which may become due and payable by the University to the Supplier in respect of the Services and/or Supplies (as applicable) or any additional staff support in accordance with the provisions of this Agreement.
"Commercially Sensitive Information"		the information listed in Schedule 9 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the University that, if disclosed by the University, would cause the Supplier significant commercial disadvantage or material financial loss.
"Commissioner"		means the UK Information Commissioner, being the independent regulator and supervisory authority in the UK pursuant to section 114 of the Data Protection Act 2018.
"Confidential Information"		means: <ul style="list-style-type: none"> (a) Information including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to: <ul style="list-style-type: none"> (a) the Disclosing Party Group; or

- (b) operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
 - (b) other information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
 - (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
 - (d) information derived from any of the above,
- but not including any information which:
- (a) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (b) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
 - (c) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
 - (d) was independently developed without access to the Confidential Information; or
 - (e) relates to the Supplier's:
 - (i) performance under this Agreement; or
 - (ii) failure to pay any Sub-contractor as required pursuant to the Agreement.

“Conflict of Interest” has the meaning given to it in clause 12.1.1.

“Contract Mobilisation Plan”	means the contract mobilisation plan relating to the Services and/or Supplies (as applicable), included in Schedule 7 as amended by agreement between the parties from time to time.
“Contract Start Date”	has the meaning given to it in the Specified Terms.
“Contract Year”	means a period of 12 months commencing on the anniversary of the Contract Start Date each year.
“Control”	means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly.
“Consistent Failure”	Shall have the meaning given to it in the Specified Terms.
“Coronavirus”	the disease known as coronavirus disease (COVID-19) and the virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
“Data Protection Legislation”	<p>means all applicable data protection and privacy legislation in force from time to time in the UK including:</p> <ul style="list-style-type: none"> (a) the Data Protection Act 2018; (b) the UK GDPR; (c) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; (d) any laws which implement or amend any such laws in the UK; (e) the guidance codes of practice issued by the Commissioner or other Supervisory Authority applicable to a party; and (f) where applicable, other non-domestic legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and binding upon a party (including, without limitation, the privacy of electronic communications).
“Debarment List”	means a published list of suppliers which, following an investigation and decision by a Minister of the Crown in accordance with section 62 of the Act, are considered Excluded Suppliers or Excludable Suppliers and which the Minister of the Crown has determined should be entered on the debarment list.
“Default”	any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub contractors in connection with or in relation to the subject-matter of this agreement and in respect of which such party is liable to the other.
“Disclosing Party”	means party which discloses or makes available directly or indirectly Confidential Information.

“Disclosing Party Group”	means: <ul style="list-style-type: none"> (a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the University, the University and any governmental or regulatory body with which the University or the Supplier interacts in connection with this Agreement.
“Dispute Resolution Procedure”	has the meaning given to it in clause 17.
“EEA”	the European Economic Area.
“Electronic Invoice”	means an invoice which is issued, transmitted and received in a structured electronic format that allows for its automatic and electronic processing.
“Environmental Information Regulations”	the Environmental Information Regulations 2004 (SI 2004/3391) as retained pursuant to the European Union (Withdrawal) Act 2018 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
“EORI Number”	means an economic operators registration and identification number, being an identification number for use in all customs procedures.
“Excluded Supplier”	means a supplier (or its Associated Person) who either: <ul style="list-style-type: none"> (a) meets a mandatory ground for exclusion under Schedule 6 of the Act which the University considers is continuing or is likely to reoccur; or (b) is on the Debarment List for a mandatory exclusion ground.
“Excludable Supplier”	Means a supplier (or its Associated Person) who either: <ul style="list-style-type: none"> (a) meets a discretionary ground for exclusion under Schedule 7 of the Act which the University considers is continuing or likely to reoccur; or (b) is on the Debarment List for a discretionary exclusion ground.
“Extension Period”	has the meaning given to it in the Specified Terms (Term and Extension).
“FOIA”	the Freedom of Information Act 2000, and any subordinate legislation made under the 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.
“Force Majeure”	any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier,

		the Supplier's Personnel or any other failure in the Supplier's supply chain.
"General Conditions"		these terms and conditions set out in clause 2 to clause 46 (inclusive).
"Information"		has the meaning given under section 84 of FOIA.
"Initial Term"		has the meaning given to it in the Specified Terms (Term and Extension).
"Intellectual Property"		any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.
"Intention to Terminate Notice"		has the meaning given to it in clause 28.3.
"Key Personnel"		those personnel identified in the Supplier's Tender for the roles attributed to such personnel, as modified from time to time in accordance with Schedule 10.
"Key-Subcontractor"		means any Sub-contractor: <ul style="list-style-type: none"> (a) which, in the opinion of the University, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate fees and charges forecast to be payable under this Agreement.
"KPIs"		means any factors against which the Supplier's performance under the Agreement is to be assessed during the Term as set out in the Agreement and by whatever name called under the Agreement.
"Living Wage Foundation"	Wage	means the Living Wage Foundation, an initiative of Citizens UK, 136 Cavell Street, London, E1 2JA and with registered charity number 1107264.
"Major Incident"		an event which, because of its scale or potential impact, (has or will have) a significant impact on the day to day operation of the Services and/or Supplies (as applicable).
"Management Reports"		the reports to be prepared and presented by the Supplier in accordance with the Specified Terms.
"Minimum Requirements"		where applicable, any minimum requirements identified as such in the Specification.

“Necessary Consents”	all approvals, requisite qualifications recognised within the UK by the appropriate governing body, certificates, authorisations, permissions, licences, permits, VISAs and work permits (where applicable), registrations (including registration with the UK Internal Market Scheme where applicable), EORI number or XI EORI numbers (as appropriate for the movement of Supplies), regulations and consents necessary from time to time for the performance of the Service and/or Supplies.
“Pandemic Event”	<p>an event or delay caused by, or arising from or in relation to, a pandemic or Coronavirus that prevents or delays the performance of the obligations of the Supplier and the University under this agreement or the performance of any obligations under this agreement, including (but not limited to):</p> <ul style="list-style-type: none"> (a) absences or unavailability of the Supplier, the University, the Supplier’s Personnel, the University’s Authorised Representative, the University’s Contract Manager, Key Personnel or any additional staff owing to any illness, quarantining or self-isolation (including, but not limited to, precautionary self-isolation) where the decision to quarantine or self-isolate is recommended by the Government; or (b) any loss of, or disruption to, any of facilities of the Supplier or the University; or (c) any recommended or mandatory measures introduced by the Government intended to prevent or delay the spread of Coronavirus.
“Pandemic Event Cessation Notice”	has the meaning given to it in clause 31.
“Performance Review Meeting”	the meeting held between the University and the Supplier in accordance with the requirements set out in the Specified Terms.
“Personal Data”	shall have the same meaning as set out in the Data Protection Act 2018.
“Prohibited Act”	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the University a financial or other advantage to: <ul style="list-style-type: none"> (iii) induce that person to perform improperly a relevant function or activity; or (iv) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence:

	<ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the University; or (iv) defrauding, attempting to defraud or conspiring to defraud the University.
“Real Living Wage”	means the wage rate independently calculated and published by the Living Wage Foundation (or any replacement organisation) from time to time; .
“Recipient”	means a party which receives or obtains directly or indirectly Confidential Information.
“Regulations”	means any regulations or secondary legislation made by ministers under powers given by the Act to do so.
“Regulatory Bodies”	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this agreement or any other affairs of the University and "Regulatory Body" shall be construed accordingly.
“Remediation Notice”	a notice served by the University in accordance with clause 29.
“Replacement Services”	any services that are identical or substantially similar to any of the Services and which the University receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the University internally or by any Replacement Supplier.
“Replacement Supplies”	any Supplies that are identical or substantially similar to any of the Supplies and which the University receives in substitution for any of the Supplies following the termination or expiry of this agreement, whether those Supplies are provided by the University internally or by any Replacement Supplier.
“Replacement Supplier”	any third party supplier of Replacement Services or Replacement Supplies appointed by the University from time to time.
“Reporting Obligations”	means the statutory requirements imposed on the University under the Act or any other applicable laws and regulations to publish relevant information relating to the Agreement including, but not limited to, contract details notices, contract performance notices, contract termination notices, KPIs (if applicable), and information related to the Debarment List under section 62 of the Act.
“Request Information”	for a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

“Required Electronic Form”	<p>means a form that:</p> <ul style="list-style-type: none"> (a) complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice); and (b) uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution.
“Required Insurances”	the insurances that the Supplier is required to maintain pursuant to clause 21, as set out in the Specified Terms.
“Services”	the services to be delivered by or on behalf of the Supplier under this Agreement (if applicable), as specified in the Specified Terms.
“Service Level”	the specific service levels to which the Services are to be provided, as set out in the Specification which are subject to the terms of Schedule 1.
“Specification”	the specification of Supplies and/or Services set out in the Tender Documents appended at Schedule 3 of this Agreement.
“Standard Contractual Clauses (SCCs)”	the ICO's International Data Transfer Agreement for the transfer of personal data from the UK and/or the ICO's International Data Transfer Addendum to EU Commission Standard Contractual Clauses or such other alternative clauses as may be approved by from time to time, being such appropriate safeguard for cross border transfers of Personal Data as required by Article 46 UK GDPR.
“Sub-contractor”	<p>means any third party with whom:</p> <ul style="list-style-type: none"> (a) the Supplier enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract, <p>or directors, officers, employees, agents, consultants and contractors of that third party.</p>
“Sub-Contract”	means any contract (or proposed contract) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services and/or Supplies, facilities or any services which are material for the provision of the Services and/or Supplies or any part thereof or necessary for the management, direction or control of the Services and/or Supplies, or any part thereof. The phrase “Sub-contracted” shall be construed accordingly.
“Sub-Contractor”	the contractors or suppliers that enter into a Sub-Contract with the Supplier.
“Supervisory Authority”	the relevant supervisory authority in the territory where a party to this Agreement is established (other than the Commissioner).

“Supplies”	the goods to be delivered by or on behalf of the Supplier under this Agreement (if applicable), as specified in the Specified Terms.
“Supplier Party”	the Supplier’s agents and contractors, including each Sub-Contractor.
“Supplier’s Authorised Representative”	the person designated as such by the Supplier, the first such person being set out in the Specified Terms.
“Supplier’s Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement.
“Supplier Personal Data”	any personal data which the Supplier processes in connection with this Agreement in the capacity of a Controller.
“Supplier Privacy Policy”	the privacy policy of the Supplier in respect of its activities under this Agreement acting as Controller, as required in accordance with the Data Protection Legislation.
“Supplier’s Tender”	the tender submitted by the Supplier and other associated documentation submitted by the Supplier in relation to its tender.
“Tender Documents”	the procurement documents issued by the University for this agreement which include, for the avoidance of doubt, any clarification responses issued by the University.
“Term”	the duration of the Agreement comprising of: <ul style="list-style-type: none"> (a) the Initial Term; and (b) any Extension Period.
“Termination Date”	the date of expiry or termination of this Agreement.
“Termination Payment Default”	a default by the University in the payment of the Charges, reference to which shall exclude any disputed invoice(s).
“Unauthorised Territory”	means a territory outside the UK which has not received an adequacy regulation pursuant to Section 17A of the Data Protection Act 2018, as such territory is not considered to provide adequate levels of protection of Personal Data.
“UK GDPR”	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
“University’s Authorised Representative”	the person(s) designated as such by the University, the first such person(s) being set out in the Specified Terms.
“University’s Contract Manager”	the person designated as such by the University, the first such person being set out in the Specified Terms.
“University Data”	means: <ul style="list-style-type: none"> (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these)

which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- (i) supplied to the Supplier by or on behalf of the University; or
- (ii) which the Supplier has access to pursuant to this Agreement; or
- (iii) which the Supplier has is required to generate, process, store or transmit pursuant to this agreement; or
- (iv) stored on the University computer system or otherwise owned by the University; or

- (b) any Personal Data for which the University is the Data Controller.

“University’s Premises” the premises identified in Schedule 1 (Specification) and which are to be made available for use by the Supplier for the purposes of carrying out the Supplier’s obligations under the Agreement.

“Working Day” Monday to Friday, excluding any public holidays in Northern Ireland.

“XI EORI Number” means an economic operators registration and identification number, being an identification number for use in all customs procedures and as required to move goods to or from Northern Ireland.

2.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

2.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

2.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules, except where the Specified Terms specifies that a schedule does not apply. Where a schedule is expressly identified as “Not Applicable”, it shall be treated as omitted from this Agreement and shall have no effect.

2.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

2.6 Words in the singular shall include the plural and vice versa.

2.7 A reference to one gender shall include a reference to the other genders.

2.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2.9 A reference to **writing** or **written** includes faxes and e-mail.

2.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

- 2.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 2.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 2.13 Where any statement is qualified by the expression **so far as the Supplier is aware or to the Supplier's knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.

COMMENCEMENT AND DURATION

3. TERM

This Agreement shall take effect on the Contract Start Date and shall continue for the Term in accordance with the terms set out in the Specified Terms.

4. CONSENTS, COMPLIANCE, GENERAL WARRANTIES AND DUE DILIGENCE

- 4.1 The Supplier warrants that at the Contract Start Date it has all Necessary Consents in place to provide the Services and/or Supplies (as applicable) and shall ensure that it maintains all Necessary Consents during the Term. The University shall not (unless otherwise agreed in advance in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 Where there is any conflict or inconsistency between the provisions of the Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain and comply with a Necessary Consent in line with the requirements of the Services and/or Supplies (as applicable) and this Agreement.
- 4.3 The Supplier acknowledges and confirms that:
- 4.3.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and/or Supplies (as applicable) and has asked the University all the questions it considers to be relevant for the purpose of establishing whether it is able to carry out its obligations in accordance with the terms of this Agreement;
 - 4.3.2 it has received all information requested by it from the University pursuant to clause 4.3.1 and has had the opportunity to clarify such information to enable it to determine whether it is able to carry out its obligations in accordance with the terms of this Agreement;
 - 4.3.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the University pursuant to clause 4.3.2;
 - 4.3.4 it has raised all relevant due diligence questions with the University before the Contract Start Date; and
 - 4.3.5 it has entered into this Agreement in reliance on its own due diligence.
- 4.4 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the University in respect of any information which is provided to the Supplier by the University and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.5 The Supplier:

- 4.5.1 warrants and represents that it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- 4.5.2 warrants and represents that no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this agreement;
- 4.5.3 warrants and represents that it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this agreement;
- 4.5.4 warrants and represents that no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 4.5.5 warrants and represents that it owns, has obtained or is able to obtain, valid licences for all Intellectual Property that are necessary for the performance of its obligations under this agreement;
- 4.5.6 warrants and represents that in the three 3 years prior to the date of this agreement:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this agreement;
- 4.5.7 as at the Contract Start Date, warrants and represents that all information contained in the Supplier's Tender and in Schedule 4 (Supplier's Solution) remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the University prior to execution of the agreement;
- 4.5.8 acknowledges that, where the Specification identifies Minimum Requirements, it shall continue to meet such Minimum Requirements during the Term of the Contract and that failure to do so shall constitute a material breach of the Contract. For the avoidance of doubt, Minimum Requirements shall not at any time during the Term be subject to variation; and
- 4.5.9 shall promptly notify the University in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the University during such due diligence which materially and adversely affects its ability to perform its obligations under the Agreement.
- 4.6 The Supplier shall not be entitled to recover any additional costs from the University which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the University by the Supplier in accordance with clause 4.5.9.
- 4.7 Nothing in this clause shall limit or exclude the liability of the University for fraud or fraudulent misrepresentation.

5. EQUALITY

General

5.1 The Supplier shall (and shall procure that all servants, agents, employees, consultants and Sub-contractors of the Supplier including the Supplier's Personnel shall):

5.1.1 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the University requests so as to enable the University to comply with its obligations under the Human Rights Act 1998; and

5.1.2 comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 as amended by the Sex Discrimination (Northern Ireland) Order 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equality Act (Sexual Orientation) Regulations (NI) 2006, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Disability Discrimination (Northern Ireland) Order 2006, the Race Relations (Northern Ireland) Order 1997 as amended by the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003, the Employment Relations (Northern Ireland) Order 1999, the Employment Rights (Northern Ireland) Order 1996 and the Employment Equality (Age) Regulations (Northern Ireland) 2006 and shall ensure that in his employment policies and practices and in the delivery of the services required of the Supplier under this agreement he has due regard to the need to promote equality of treatment and opportunity between:

- (a) persons of different religious beliefs or political opinions;
- (b) men and women or married and unmarried persons;
- (c) persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave);
- (d) persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);
- (e) persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
- (f) persons of different ages; and
- (g) persons of differing sexual orientation.

Equality Policies and Practices

5.2 The Supplier shall introduce and shall procure that any Sub-Contractor shall also introduce and implement an equal opportunities policy in accordance with guidance from and to the satisfaction of the Equality Commission. The Supplier shall review such policies on a regular basis (and shall procure that its Sub-Contractors do likewise) and the University shall be entitled to receive upon request by it a copy of any such policy.

5.3 The Supplier shall take all reasonable steps to ensure that all of the Supplier's Personnel comply with its equal opportunities policies (referred to in clause 5.2 above). These steps shall include:

5.3.1 the issue of written instructions to the Supplier's Personnel and other relevant persons;

- 5.3.2 the appointment or designation of a senior manager with responsibility for equal opportunities;
 - 5.3.3 training of all the Supplier's Personnel and other relevant persons in equal opportunities and harassment matters; and
 - 5.3.4 the inclusion of the topic of equality as an agenda item at team, management and staff meetings,
 - 5.3.5 and the Supplier shall procure that its Sub-Contractors do likewise (in relation to their equal opportunities policies).
- 5.4 In the event of:
- 5.4.1 the Equality Commission notifying the Supplier of an alleged breach by it or any Sub-Contractor (or any of their shareholders and/or directors) of the Fair Employment and Treatment (Northern Ireland) Order 1998; and/or
 - 5.4.2 any finding of unlawful discrimination (or any offence under the applicable laws mentioned in clause 5.1 above) being made against the Supplier or its Sub-Contractors during the Term by any Industrial or Fair Employment Tribunal or Court,
- the Supplier shall inform the University as soon as reasonably practicable and shall take such steps (including the dismissal or replacement of any relevant Supplier's Personnel or Sub-Contractor(s)) as the University directs and shall seek the advice of the Equality Commission in order to prevent any such offence or repetition of the unlawful discrimination as the case may be.
- 5.5 The Supplier shall monitor (in accordance with guidance issued by the Equality Commission) the composition of its workforce and applicants for employment and shall provide an annual report on the composition of such workforce and applicants to the University. If such monitoring reveals under-representation or lack of fair participation of particular groups, the Supplier shall review the operation of its relevant policies and take affirmative/positive action where appropriate. The Supplier shall impose on its Sub-Contractors obligations similar to those undertaken by it in this clause 5 and shall procure that those Sub-Contractors comply with such obligations.
- 5.6 The Supplier shall provide such information as the University may from time to time request (including information requested to be provided by any Sub-Contractors) for the purpose of assessing the Supplier's compliance with its obligations under clauses 5.3 to 5.6 of these General Terms and Conditions.

Equality

- 5.7 The Supplier shall, and shall procure that each Subcontractor shall, in performing its/their obligations under this agreement (and other relevant agreements), use best endeavours to comply with the provisions of Section 75 of the Northern Ireland Act 1998, as if they were a public authority within the meaning of that section.
- 5.8 The Supplier further acknowledges that the University must, in carrying out its functions, have due regard to the need to promote equality of opportunity as contemplated by the Northern Ireland Act 1998 and the Supplier shall use all reasonable endeavours to assist (and to ensure that relevant Subcontractor assists) the University in relation to same.

6. REAL LIVING WAGE

- 6.1 The Supplier shall ensure that, at all times during the Term, the Supplier Personnel are paid an amount not less than the Real Living Wage.
- 6.2 The Supplier shall:

- 6.2.1 apply any increases to the Real Living Wage announced by the Living Wage Foundation within two (2) months of such announcement;
- 6.2.2 maintain a complete set of records to demonstrate compliance with this clause 6; and
- 6.2.3 provide such evidence of compliance as the University may reasonably request.

7. HEALTH AND SAFETY

- 7.1 The Supplier shall promptly notify the University of any health and safety hazards, which may arise in connection with the performance of the agreement. The University shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the University's Premises and that may affect the Supplier in the performance of the agreement.
- 7.2 While on the University's Premises, the Supplier shall comply with any health and safety measures implemented by the University in respect of staff and other persons working on the University's Premises.
- 7.3 The Supplier shall notify the University immediately in the event of any incident occurring in the performance of the agreement on the University's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 7.4 The Supplier shall comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the University's Premises in the performance of the agreement.
- 7.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the University on request.

8. UNIVERSITY'S PREMISES

- 8.1 The University shall, subject to clause 6 (Health and Safety) and clause 10 (Personnel), provide the Supplier (and its Sub-Contractors) with access to such parts of the University's Premises as the Supplier reasonably requires for the purposes only of properly performing its obligations under the Agreement.
- 8.2 The University shall provide the Supplier with such accommodation and facilities in the University's Premises as is specified in Schedule 3 (Specification) or which is otherwise agreed by the parties from time to time.
- 8.3 Any accommodation or facilities in the University's Premises made available to the Supplier by the University in connection with this agreement, including but not limited to those specified in Schedule 3 (Specification), shall be made available to the Supplier on a non-exclusive licence basis and shall be used by the Supplier solely for the purpose of performing the Services and providing the Supplies. The Supplier shall have the use of such land or Premises as licensee.
- 8.4 The Parties agree that there is no intention on the part of the University to create a tenancy of any nature whatsoever in favour of the Supplier or its employees and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this agreement, the University retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

9. CHARGES AND PAYMENT

- 9.1 In consideration of the Supplier carrying out its obligations in accordance with the terms and conditions of this Agreement, the University shall pay the Charges to the Supplier.

- 9.2 Subject to otherwise being agreed between the parties as may be set out in Schedule 5 (Charges), the Supplier shall invoice the University for the payment of the Charges by the fifth Working Day of each calendar month for the previous month.
- 9.3 The Supplier shall email all invoices to payments@ulster.ac.uk, unless requested otherwise by the University.
- 9.4 Subject to the receipt of a valid undisputed invoice raised in accordance with clause 9.2, the University shall pay the Supplier the Charges due by the date which is the later of:
- 9.4.1 thirty (30) days of receipt of an undisputed invoice from the Supplier; or
- 9.4.2 the day on which the payment falls due in accordance with the invoice, which have become payable within thirty (30) days of receipt of an undisputed invoice from the Supplier.
- 9.5 The University shall process invoices in a timely manner and shall notify the Supplier without undue delay if it disputes the invoice or considers the invoice invalid.
- 9.6 For the avoidance of doubt, an invoice is valid if:
- 9.6.1 it is an Electronic Invoice issued in the Required Electronic Form; and
- 9.6.2 it sets out the minimum required information and meets any other requirements set out in the Agreement.
- 9.7 For the purposes of clause 9.6.2, minimum required information shall include:
- 9.7.1 the name and contact details of the invoicing party;
- 9.7.2 a description of the goods, services or works supplied;
- 9.7.3 the name of the campus (if applicable);
- 9.7.4 the sum requested; and
- 9.7.5 a unique identification number (i.e. such as a purchase order number) authorised and issued by the University).
- 9.8 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall ensure that any such Sub-contract includes a provision equivalent to clauses 9.1 to 9.8.
- 9.9 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 17 (Dispute Resolution). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the parties.
- 9.10 Subject to clause 9.9, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Subject to clause 29.3, the Supplier shall not suspend the supply of the Services and/or Supplies (as applicable) if any payment is overdue.
- 9.11 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the University following delivery of a valid VAT invoice. The Supplier shall indemnify the University against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the University at any time in respect of

the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

- 9.12 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the University pursuant to this agreement. Such records shall be retained for inspection by the University for seven (7) years from the end of the Contract Year to which the records relate.
- 9.13 The University may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement, or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the University.
- 9.14 The Supplier shall make any payments due to the University without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the University to the Supplier.

STAFF

10. PERSONNEL

- 10.1 The Supplier shall be responsible for providing at its own cost and expense all the personnel necessary to perform its obligations under the Agreement.
- 10.2 At all times, the Supplier shall ensure that:
 - 10.2.1 each of the Supplier's Personnel is suitably qualified, adequately trained and capable of performing the obligations in respect of which they are engaged;
 - 10.2.2 each of the Supplier's Personnel providing security-related Services and/or Supplies is trained and licenced by the British Security Industry Association;
 - 10.2.3 there is an adequate number of Supplier's Personnel to perform the Supplier's obligations properly;
 - 10.2.4 only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services and/or Supplies;
 - 10.2.5 all of the Supplier's Personnel comply with all of the University's policies including those that apply to persons who are allowed access to the applicable University's Premises.
- 10.3 The University may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 10.4 The Supplier shall replace any of the Supplier's Personnel who the University reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements required under this Agreement.
- 10.5 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the fulfilment of the Supplier's obligations under the Agreement and, on request, provide reasonable information to the University on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

- 10.6 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services and/or Supplies is at least as good as the prevailing industry norm for similar services, locations and environments.

11. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 11.1 The parties acknowledge that the Supplier is a Regulated Activity Supplier with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.
- 11.2 The Supplier shall ensure that all individuals engaged in the provision of the Services are:
- 11.2.1 subject to a valid enhanced disclosure check undertaken through Access Northern Ireland including a check against the adults' barred list or the children's barred list, as appropriate; and
 - 11.2.2 the Supplier shall monitor the level and validity of the checks under this clause 11.2 for each member of staff.
- 11.3 The Supplier warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 and any regulations made thereunder, as amended from time to time.
- 11.4 The Supplier shall immediately notify the University of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 11 have been met.
- 11.5 The Supplier shall refer information about any person carrying out the Services to the Independent Safeguarding Authority (ISA) where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any persons listed in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.
- 11.6 The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

12. CONFLICTS OF INTEREST

- 12.1 The Supplier must:
- 12.1.1 take action to ensure that neither the Supplier nor any of the Supplier's Personnel is placed in a position where, in the reasonable opinion of the University, there is an actual, perceived, or a potential conflict, between the professional, pecuniary, or personal interests of the Supplier or Supplier Personnel and the duties owed to the University under the provisions of this agreement (the "**Conflict of Interest**"); and
 - 12.1.2 promptly and in any event within 2 days of the circumstances giving rise to the Conflict of Interest occurring, notify the University in writing of the Conflict of Interest, such notice to provide the University with all information reasonably required to enable the University to assess the implications of the Conflict of Interest.
- 12.2 The University will consider whether there are any appropriate measures that can be put in place to remedy the Conflict of Interest in light of the University's obligations under the Act. If, in the reasonable opinion of the University, such measures do not or will not resolve the Conflict of Interest, the University may terminate this Agreement with immediate effect by giving notice in writing to the Supplier.

- 12.3 The actions of the University pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the University.

CONTRACT MANAGEMENT

13. MONITORING OF CONTRACT PERFORMANCE

- 13.1 The University shall be entitled to monitor the performance of Supplier's obligations under the Agreement, including by reference to any KPIs and/or Service Levels (if applicable) as set out in Schedule 3 (Specification).
- 13.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the University in carrying out the monitoring referred to in in this clause at no additional charge to the University.
- 13.3 The University shall manage unsatisfactory performance of the Supplier's obligations in accordance with the Protocol for Managing Supplier Poor Performance ([Sourcing and Construction Toolkits | Department of Finance](#)), including any subsequent amendments or replacements.
- 13.4 If:
- 13.4.1 the Supplier has breached the terms of the Agreement and the breach results:
- (a) termination (or partial termination) of the Agreement;
 - (b) the award of damages; or
 - (c) a settlement agreement between the Supplier and the University; or
- 13.4.2 the University considers that the Supplier:
- (a) is not performing its obligations under the Agreement to the satisfaction of the University; and
 - (b) has been given proper opportunity to improve performance and has failed to do so,

then before the end of the period of 30 days beginning with the day on which this clause 13.4 first applies in relation to a breach or failure to perform, the University shall be permitted to publish information relating to the breach or failure to perform, the circumstances giving rise to the application of this clause 13.4, and any other information as required under any section of the Act, including section 95, in line with its Reporting Obligations.

14. CONTRACT REVIEW AND MEETINGS

- 14.1 The University's Contract Manager shall be responsible for managing the Agreement.
- 14.2 The Supplier shall nominate a suitably experienced member of the Supplier's Personnel to act as an account manager and to be the point of contact for the University (the "**Supplier's Account Manager**").
- 14.3 The Supplier's Account Manager shall be responsible for:
- 14.3.1 delivering prompt and efficient service to ensure the achievement of the agreed KPIs and/or Service Levels (as applicable);
- 14.3.2 resolving any issues expeditiously and to the satisfaction of both parties;

- 14.3.3 maintaining full confidentiality around information supplied by the University; and
- 14.3.4 attending meetings as and when requested by the University.
- 14.4 The Supplier shall attend the Performance Review Meetings as set out in the Specified Terms.
- 14.5 The University reserves the right to schedule the Performance Review Meetings on any of its campuses or virtually.
- 15. CONTINUOUS IMPROVEMENT**
- 15.1 The Supplier shall have an ongoing obligation throughout the Term to continuously review systems and procedures and identify new or potential improvements to the Services and/or Supplies (as applicable). As part of this obligation the Supplier shall identify and report to the University's Contract Manager on:
 - 15.1.1 the emergence of new and evolving relevant technologies which could improve the Services and/or Supplies (as applicable);
 - 15.1.2 new or potential improvements to the Services and/or Supplies (as applicable) including the quality, responsiveness, procedures, efficiency improvements, cost saving, added value, performance mechanisms and customer support services in relation to the Services and/or Supplies (as applicable);
 - 15.1.3 new or potential improvements to the interfaces or integration of the Services and/or Supplies (as applicable) with other services provided by third parties or the University which might result in efficiency or productivity gains or in reduction of operational risk; and
 - 15.1.4 changes in the management /supervisory structure and ways of working that would enable the Services and/or Supplies (as applicable) to be delivered at lower costs and/or at greater benefits to the University.
- 15.2 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 15.1 shall be addressed by the parties using the Change Control Procedure.

16. CHANGE CONTROL

General Principles

- 16.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 16.2 Where the University or the Supplier sees a need to change this Agreement, for reasons other than to meet the day to day operational requirements, the University may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in clause 16.6.
- 16.3 Until such time as a Change is made in accordance with the Change Control Procedure, the University and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 16.4 Any discussions which may take place between the University and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 16.5 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, with the exception of emergency situations, and which has not been otherwise agreed in accordance with the provisions of this Schedule, shall be undertaken entirely at the expense and liability of the Supplier.

Change Control Procedure

- 16.6 Discussion between the University and the Supplier concerning a Change shall result in any one of the following:
- 16.6.1 no further action being taken; or
 - 16.6.2 a request to vary this Agreement by the University; or
 - 16.6.3 a recommendation to vary this Agreement by the Supplier.
- 16.7 Where a written request for an amendment is received from the University, the Supplier shall, unless otherwise agreed, submit two copies of a change control note signed by the Supplier to the University within one week of the date of the request containing the details set out in clause 16.9 (the “**Change Control Note**”).
- 16.8 A recommendation to amend this agreement by the Supplier shall be submitted directly to the University in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The University shall give its response to the Change Control Note within three weeks.
- 16.9 Each Change Control Note shall contain:
- 16.9.1 the title of the Change;
 - 16.9.2 the originator and date of the request or recommendation for the Change;
 - 16.9.3 the reason for the Change;
 - 16.9.4 full details of the Change, including any specifications;
 - 16.9.5 the price, if any, of the Change;
 - 16.9.6 a timetable for implementation, together with any proposals for acceptance of the Change;
 - 16.9.7 a schedule of payments if appropriate;
 - 16.9.8 details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (a) the timetable for the provision of the Change;
 - (b) the personnel to be provided;
 - (c) the Charges;
 - (d) the Documentation to be provided;
 - (e) the training to be provided;
 - (f) working arrangements;
 - (g) other contractual issues;
 - 16.9.9 the date of expiry of validity of the Change Control Note; and
 - 16.9.10 provision for signature by the University and the Supplier.

16.10 For each Change Control Note submitted by the Supplier the University shall, within the period of the validity of the Change Control Note:

16.10.1 allocate a sequential number to the Change Control Note; and

16.10.2 evaluate the Change Control Note and, as appropriate:

(a) request further information;

(b) arrange for two copies of the Change Control Note to be signed by or on behalf of the University and return one of the copies to the Supplier; or

(c) notify the Supplier of the rejection of the Change Control Note.

16.11 A Change Control Note signed by the University and by the Supplier shall constitute an amendment to this Agreement.

17. DISPUTE RESOLUTION

17.1 Either party may call an extraordinary meeting of the parties by service of not less than 5 days' written notice and:

17.1.1 the Supplier agrees to procure that the Supplier's Authorised Representative together with any other member of Key Personnel requested to attend by the University (if any) shall attend all extraordinary meetings called in accordance with this clause; and

17.1.2 the University agrees to procure that the University's Contract Manager shall attend all extraordinary meetings called in accordance with this clause.

17.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to at a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.

17.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.

17.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).

17.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the Supplier's Authorised Representative and the University's Contract Manager, shall remain binding on the parties.

17.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.

- 17.7 While the Dispute Resolution Procedure referred to in this clause 17 is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

18. SUB-CONTRACTING AND ASSIGNMENT

General:

- 18.1 Except as otherwise expressly permitted under this clause 18, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the University.

- 18.2 If:

18.2.1 as a condition of awarding the Agreement, the University required any obligation of the Supplier under this Agreement to be Sub-contracted; or

18.2.2 the Supplier:

- (a) indicated to the University that it intended all or part of the Agreement to be Sub-contracted; and
- (b) relied on that other supplier to satisfy any conditions of participation in the competitive procedure pursuant to which the Agreement was awarded to the Supplier,

the University shall be entitled to direct the Supplier to enter into a legally binding Sub-contract with that Sub-contractor in a form acceptable to the University for the purpose of that Sub-contractor performing the relevant part of the Agreement and procure that the Sub-contractor complies with such terms.

- 18.3 In the event that the Supplier enters into any Sub-Contract in connection with this agreement in accordance with the provisions of clause 18.2 it shall:

18.3.1 remain responsible to the University for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors; and

18.3.2 provide a copy, at no charge to the University, of any Sub-Contract on receipt of a request for such by the University's Contract Manager.

- 18.4 Notwithstanding any provision of the Agreement capable of being construed to the contrary, the Supplier warrants and undertakes to not at any time:

18.4.1 contract with a Sub-contractor that is an Excluded Supplier;

18.4.2 contract with a Sub-contractor that is an Excludable Supplier without the prior written consent of the University, which consent may be given subject to such conditions as the University considers necessary;

- 18.4.3 contract with a Sub-contractor that is on the Debarment List, without the University's prior written consent where the Sub-contractor is on the Debarment List on the basis of a discretionary exclusion ground.
- 18.5 The University shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the University.

Replacement Sub-contractors and Associated Persons:

- 18.6 The Supplier shall not replace any Sub-contractor or Associated Person involved in the performance of the Agreement without the prior written consent of the University. Failure to notify the University of any such replacement by the Supplier shall constitute a material breach of the Agreement.
- 18.7 Where such replacement is proposed, the Supplier shall:
- 18.7.1 provide a full written explanation of the proposed change and reasons for the replacement of a Sub-contractor or Associated Person;
 - 18.7.2 provide full details of the proposed replacement Sub-contractor or Associated Person as required by the University, including, but not limited to, their identity and role;
 - 18.7.3 demonstrate to the satisfaction of the University that the proposed replacement Sub-contractor or Associated Person:
 - (a) is equivalent to the Sub-contractor or Associated Person being replaced, and their capability, and suitability to perform the relevant part of the Agreement; and
 - (b) has not committed any act or omission that would have prevented their selection had they been part of the original selection process.
- 18.8 The University reserves the right to request, and shall be entitled to obtain, further information from the Supplier about the proposed replacement in order to assess its impact on the Agreement. If such information is not provided within the timescales specified by the University, the proposed change may be rejected.
- 18.9 The University reserves the right, in its absolute discretion, not to approve the Supplier's proposal to replace a Sub-contractor or Associated Person. In the event that the University rejects the Supplier's proposal to replace an existing Sub-contractor or Associated Person, the Supplier shall, depending on the circumstances and reasons for the proposal to replace a Sub-contractor or Associated Person:
- 18.9.1 retain the existing Sub-contractor or Associated Person without replacement; or
 - 18.9.2 assume the obligations of the relevant Sub-contractor or Associated Person for the purposes of performing the Supplier's obligations of the relevant part of the Agreement for which that Sub-contractor or Associated Person is responsible for.
- 18.10 For the avoidance of doubt, any replacement Sub-contractor or Associated Person approved in accordance with clause 18.8 shall be deemed a Sub-contractor or Associated Person for the purposes of this Agreement, and all applicable obligations, liabilities and requirements imposed on the Supplier in relation to such persons including, but not limited to clause 18.4 shall continue to apply in full.

LIABILITY

19. INDEMNITIES

The Supplier shall indemnify and keep indemnified the University against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of any Supplier's Personnel or of any Supplier Party save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the University or its authorised representatives (excluding any Supplier's Personnel).

20. LIMITATION OF LIABILITY

- 20.1 Subject to clause 20.5, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 20.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 20.3 Subject to clause 20.5 the Supplier's total aggregate liability is as set out in the Specified Terms.
- 20.4 Subject to clause 20.5 the Supplier's total aggregate liability is as set out in the Specified Terms.
- 20.5 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- 20.5.1 fraud or fraudulent misrepresentation;
 - 20.5.2 death or personal injury caused by its negligence;
 - 20.5.3 breach of any obligation as to title implied by statute; or
 - 20.5.1 any other act or omission, liability for which may not be limited under any applicable law.

21. INSURANCE

- 21.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company the Required Insurances.
- 21.2 The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 21.3 The Supplier shall give the University, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 21.4 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the University may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 21.5 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
- 21.6 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

22. FREEDOM OF INFORMATION

- 22.1 The Supplier acknowledges that the University is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the University (at the Supplier's expense) to enable the University to comply with these information disclosure requirements.
- 22.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- 22.2.1 transfer the Request for Information to the University as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - 22.2.2 provide the University with a copy of all Information in its possession or power in the form that the University requires within five Working Days (or such other period as the University may specify) of the University requesting that Information;
 - 22.2.3 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 the FOIA or regulation 5 of the Environmental Information Regulations.
- 22.3 The University shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Confidential Information:
- 22.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - 22.3.2 is to be disclosed in response to a Request for Information.
- 22.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the University.
- 22.5 The Supplier 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 the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- 22.5.1 without consulting with the Supplier; or
 - 22.5.2 following consultation with the Supplier and having taken its views into account,
- provided always that where clause 22.5.2 applies the University shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

22.6 The Supplier shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the University to inspect such records as requested from time to time.

22.7 The Supplier 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 22.5.

23. DATA PROTECTION

23.1 In this clause, the terms Controller, Processor, Data Subject, Personal Data, Personal Data Breach and processing shall have the meanings given to them in the Data Protection Act 2018 and appropriate technical and organisational measures shall have the meaning given to it in UK GDPR. Non-domestic law shall mean the law of a jurisdiction or territory outside the UK.

23.2 Both parties will comply with all applicable requirements of Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

23.3 The parties acknowledge that for the purposes of Data Protection Legislation, their roles shall be as set out in the Specified Terms (and by extent, Schedule 11 which shall set out the scope, nature and purpose of processing by the Processor, the duration of the processing, the types of Personal Data, the categories of Data Subject, and details of any cross-border transfers of Personal Data). Should the determinations change, then each party shall work together in good faith to make changes thereto.

23.4 Without prejudice to the generality of clause 23.2, to the extent that either party acts as the Controller, that party shall ensure that it has all necessary consents and notices in place to enable lawful transfer of the Personal Data to the Processor for the Term and purposes of this Agreement.

23.5 Without prejudice to the generality of clause 23.2, to the extent that either party acts as the Processor, that party shall:

23.5.1 process that Personal Data only on the documented written instructions of the Controller unless the Processor is required by Data Protection Legislation to otherwise process that Personal Data. The Supplier acknowledges the University shall rely upon the Data Protection Legislation as the basis of processing of Personal Data (if any). Where the Supplier is relying on non-domestic law as the basis for processing Personal Data, the Supplier shall promptly notify the University of this before performing the processing required by the non-domestic law unless the non-domestic law prohibits the Supplier from so notifying the University;

23.5.2 ensure that it has in place appropriate technical and organisational measures 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);

23.5.3 without prejudice to the confidentiality obligations in clause 24 of the General Conditions ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

- 23.5.4 assist the Controller, at the Controller's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with the Commissioner;
 - 23.5.5 notify the Controller without undue delay, and in any event not later than 24 hours, on becoming aware of a Personal Data Breach;
 - 23.5.6 at the written direction of the Controller, delete or return Personal Data and copies of such to the Controller on termination or expiry of the Agreement, unless required by applicable law to store the Personal Data; and
 - 23.5.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 23 and allow for audits by the Controller or the Controller's designated auditor and immediately inform the Controller if, in the opinion of the Processor, an instruction infringes Data Protection Legislation.
- 23.6 To the extent the parties act as joint controllers in respect of Personal Data pursuant to this Agreement, the parties have agreed to allocate responsibility for each of their controller obligations under the Data Protection Legislation in accordance with Part 3 of Schedule 11.
- 23.7 Without prejudice to the generality of clause 23.2, and to the extent that the Supplier acts as a Controller of Personal Data:
- 23.7.1 the Supplier shall process all Supplier Personal Data strictly in accordance with the Supplier Privacy Policy in the form disclosed to the University for approval at the Contract Start Date;
 - 23.7.2 the Supplier shall not amend the Supplier Privacy Policy without the prior written consent of the University;
 - 23.7.3 the Supplier shall promptly comply with all reasonable instructions of the University in connection with the Supplier Privacy Policy, and any amendments, shall promptly provide copies of the same to the University on request in a commonly available electronic format, and hereby consents to the Supplier making the Supplier Privacy Policy available to any applicable Data Subjects;
 - 23.7.4 the Supplier hereby undertakes, warrants and represents that the Supplier Privacy Policy, and any amendments, will at all times comply with Data Protection Legislation and that it will not make any amendments to the Supplier Privacy Policy where this would be in contravention of the Data Protection Legislation;
 - 23.7.5 as between the parties, the Supplier is solely responsible for ensuring that the processing of Supplier Personal Data complies with the Data Protection Legislation, and in particular, that all required fair processing information is provided to the relevant data subjects; and
 - 23.7.6 in the event of any inconsistency or conflict between the terms of the Supplier Privacy Policy and this Agreement, this Agreement will take precedence.
- 23.8 The Supplier (or any of its Sub-Contractors approved in accordance with the terms of this Agreement) shall not transfer Personal Data outside the UK unless the prior written consent of the University is obtained. Where such consent is granted, the Supplier must only proceed with such transfer and process the Personal Data outside the UK under the following conditions:
- 23.8.1 the transfer is to a territory which is subject to an adequacy regulation made in accordance with section 17A of the Data Protection Act 2018, being a permitted transfer under Article 45 of UK GDPR as said territory is deemed to provide

- adequate protection for the privacy rights of Data Subjects. The Supplier shall identify such territory the data processing particulars in Schedule 11;
- 23.8.2 the Supplier participates in a valid cross-border transfer mechanism in accordance with Article 46 of UK GDPR to ensure there is an adequate level of protection with respect to the privacy rights of Data Subjects. The Supplier shall identify the transfer mechanism within Schedule 11, and must immediately inform the University of any change to its status;
 - 23.8.3 one of the derogations for specific situations in the Data Protection Legislation applies to such transfer, being such derogation identified by the Supplier in Schedule 11; and
 - 23.8.4 in each of the circumstances at clause 23.8.1 to clause 23.8.3 above, ensure the transfer otherwise complies with all obligations under the Data Protection Legislation throughout the Term (or the transferring of Personal Data as applicable) and update the University of any change of status of the cross border transfer mechanism during the Term and update Schedule 11 accordingly.
- 23.9 Without prejudice to clause 18 of the General Conditions, the University consents to the Supplier appointing only the third-party processors outlined within Schedule 11 as third-party processors of Personal Data under this Agreement or other such third-party processors approved by the University from time to time in writing. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms that are substantially similar to those set out in this clause 23 and in either case which the Supplier undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the University and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.
- 23.10 If any Personal Data transfer between the University and the Supplier requires execution of SCCs in order to comply with the Data Protection Legislation (where the Supplier is located in an Unauthorised Territory), the parties will complete all relevant details in, and execute SCCs, and take all other actions required to ensure the transfer is lawful in advance of transferring the Personal Data outside the UK.
- 23.11 If the University consents to appointment by the Supplier of a Sub-Contractor located in an Unauthorised Territory in accordance with clause 18 of the General Conditions, then the University authorises the Supplier to enter into SCCs with the Sub-Contractor. The Supplier will make the executed SCCs available to the University on request.
- 23.12 At the written direction of the University, the Supplier shall delete or return to the University all University's Personal Data and certify to the University in writing it has done so, unless the Supplier is required by applicable law to continue to process that University Personal Data, in which case the Supplier shall promptly notify the University, in writing, of what that applicable law is and shall only be permitted to process that University Personal Data for the specific purpose so-notified, and all other requirements set out in this clause 23 shall continue to apply to such University Personal Data notwithstanding the termination or expiry of this Agreement for as long as such University Personal Data is processed by the Supplier. For the purposes of this clause, the obligation to "delete" data includes the obligation to delete data back-up systems as well as live systems.
- 23.13 The Supplier agrees to indemnify, keep indemnified and defend at its own expense the University against all fines, costs, claims, damages or expenses incurred by the University or for which the University may become liable due to any failure by the Supplier or the Supplier's Personnel to comply with any of its obligations under this clause 23 or the Data Protection Legislation.
- 23.14 To the extent the parties act as independent controllers in respect of Personal Data pursuant to this Agreement, the parties have agreed to work together to put in place a data sharing

agreement to ensure that all sharing of Personal Data is compliant with the requirements of Article 28(3) of UK GDPR between Controllers and Processors.

24. CONFIDENTIALITY

- 24.1 Subject to clause 24.2 and clause 24.3, the parties shall keep confidential all Confidential Information, including matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
- 24.2 Clause 24.1 shall not apply to any disclosure of Confidential Information:
- 24.2.1 required by any applicable law, provided that clause 24.1 shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
 - 24.2.2 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
 - 24.2.3 where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 24.1;
 - 24.2.4 by the University of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;
 - 24.2.5 to enable a determination to be made under clause 17 (Dispute Resolution);
 - 24.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 24.2.7 by the University to any other department, office or agency of the Government;
 - 24.2.8 by the University relating to this agreement and in respect of which the Supplier has given its prior written consent to disclosure; and
 - 24.2.9 by the University in line with clause 24.3 below.
- 24.3 Notwithstanding any other provisions under the Agreement, the Supplier acknowledges and agrees that the University may disclose and publish information relating to this Agreement, including Confidential Information of the Supplier, to third parties (including other contracting authorities and relevant governmental departments) for the purposes of complying with its Reporting Obligations. The Supplier acknowledges that such disclosures do not constitute a breach of any confidentiality or non-disclosure obligations under the Agreement.
- 24.4 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the University's employees, members, students or service users, are delivered up to the University or securely destroyed.

25. AUDIT

- 25.1 During the Term and for a period of 7 years after the Termination Date, the University may conduct or be subject to an audit for the following purposes:
- 25.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors);
 - 25.1.2 to review the integrity, confidentiality and security of any data relating to the University or any service users;

- 25.1.3 to review the Supplier's compliance with the Data Protection Act 2018, the FOIA, in accordance with clause 23 (Data Protection) and clause 22 (Freedom of Information) and any other applicable legislation;
- 25.1.4 to review any records created during the provision of the Services or Supplies (as applicable);
- 25.1.5 to review any books of account kept by the Supplier in connection with the provision of the Services or Supplies (as applicable);
- 25.1.6 to carry out the audit and certification of the University's accounts;
- 25.1.7 to carry out an examination pursuant to article 8(1) of the Audit (Northern Ireland) Order 1987 of the economy, efficiency and effectiveness with which the University has used its resources;
- 25.1.8 in order to comply with the requirements of any competent authority or regulatory body;
- 25.1.9 if applicable, to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 25.2 Except where an audit is imposed on the University by a regulatory body, the University may not conduct an audit under this clause 25 more than three (3) times in any rolling twelve month period.
- 25.3 The University shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt or delay the Supplier's ability to comply with its obligations under the Agreement.
- 25.4 Subject to the University's obligations of confidentiality, the Supplier shall on demand provide the University and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
 - 25.4.1 all information requested by the above persons within the permitted scope of the audit;
 - 25.4.2 reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - 25.4.3 access to the Supplier's Personnel.
- 25.5 The University shall endeavour to (but is not obliged to) provide at least 5 Working Days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 25.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the University for all the University's reasonable costs incurred in the course of the audit.
- 25.7 If an audit identifies that:
 - 25.7.1 the Supplier has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the University about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

25.7.2 the University has overpaid any Charges, the Supplier shall pay to the University the amount overpaid within 20 days. The University may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and

25.7.3 the University has underpaid any Charges, the University shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the University if this was due to a default by the Supplier in relation to invoicing within 20 days.

26. RECORD KEEPING

26.1 Notwithstanding any other provisions under the Agreement, the Supplier acknowledges and agrees that the University shall keep such records as it considers sufficient to explain any material decision made for the purpose of awarding or entering into this Agreement. This includes, but is not limited to:

26.1.1 all decisions required under the Act;

26.1.2 all decisions where the University is required to publish a notice, certain information or documents; and

26.1.3 all communications between the University and the Supplier in relation to the award or entry into the Agreement before the Agreement is entered into.

26.2 Such records under clause 26.1 shall be kept by the University until the end of the period of three years beginning with the day on which the Agreement is entered into.

27. INTELLECTUAL PROPERTY

27.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material:

27.1.1 furnished to or made available to the Supplier by or on behalf of the University shall remain vested in the University and its licensors;

27.1.2 generated by the Supplier for use, or intended use, in relation to the performance by the Supplier of its obligations under the agreement shall vest and remain vested in the University and the Supplier hereby assigns the Intellectual Property Rights referred to in this clause 27.1 to the University.

27.2 The Supplier hereby assigns to the University, with full legal and beneficial title, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 27.1. This assignment shall take effect on the date of this agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documentation necessary to execute this assignment.

27.3 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Supplier in the performance of the agreement. The Supplier shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this agreement grants to the University a non-exclusive licence or, if itself a licensee of those rights, shall grant to the University an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the University to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Supplier or to any other third party supplying services or supplies to the University.

27.4 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Supplies and the Supplier shall, during and after the Term, indemnify and keep indemnified and hold the University and the Authority harmless from and against all actions,

suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the University or the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

- 27.4.1 items or materials based upon designs supplied by the University; or
- 27.4.2 the use of data supplied by the University which is not required to be verified by the Supplier under any provision of the Agreement.
- 27.5 The University shall notify the Supplier in writing of any claim or demand brought against the University for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier.
- 27.6 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:
 - 27.6.1 shall consult the University on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 27.6.2 shall take due and proper account of the interests of the University; and
 - 27.6.3 shall not settle or compromise any claim without the University's prior written consent (not to be unreasonably withheld or delayed).
- 27.7 The University shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the University or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under this agreement and the Supplier shall indemnify the University for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not, however, be required to indemnify the University in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 27.6.
- 27.8 The University shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights by the University or the Supplier in connection with the performance of its obligations under this agreement.
- 27.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with this agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the University and, at its own expense and subject to the consent of the University (not to be unreasonably withheld or delayed), use its best endeavours to:
 - 27.9.1 modify any or all of the Supplies or Services (as applicable) without reducing the performance or functionality of the same, or substitute alternative Supplies or Services (as applicable) of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Supplies or to the substitute Supplies or Services;
 - 27.9.2 procure a licence to use and supply the Supplies or Services (as applicable), which are the subject of the alleged infringement, on terms which are acceptable to the University, and in the event that the Supplier is unable to comply with clause 27.9 within 20 Working Days of receipt of the Supplier's notification the University may terminate this agreement with immediate effect by notice in writing.

- 27.10 The Supplier grants to the University a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Supplier owned or developed prior to the Contract Start Date and which the University reasonably requires in order to use the Supplies or Services and exercise its rights and take the benefit of this agreement. The Supplier shall indemnify the University against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and University basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Supplies and Services, except to the extent that they have been caused by or contributed to by the University's acts or omissions.
- 27.11 The Supplier shall indemnify the University against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and University basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Supplies or Services, except to the extent that they have been caused by or contributed to by the University's acts or omissions.

TERMINATION

28. IMPLIED TERMINATION RIGHTS UNDER THE ACT

- 28.1 The University may terminate the Agreement if:
- 28.1.1 the University, acting reasonably, believes the Agreement has been awarded or modified in material breach of the Act or Regulations and that a successful legal challenge under Part 9 of the Act or otherwise could arise;
 - 28.1.2 the Supplier or an Associated Person has, since the award of the Agreement, become an Excluded Supplier or Excludable Supplier;
 - 28.1.3 subject to clause 28.2, a Sub-contractor (other than an Associated Person) is an Excluded Supplier or Excludable Supplier.
- 28.2 The University shall not be entitled to rely on clause 28.1.3:
- 28.2.1 Unless as part of the competitive tendering process for the Agreement it has requested information about whether the Supplier intends to use Sub-contractors and sought to determine whether any intended Sub-contractor is on the Debarment List; or
 - 28.2.2 if before awarding the Agreement, the University was aware that the Supplier intended to enter into the relevant Sub-contract and did not seek to determine if the Sub-contractor was an Excluded Supplier or Excludable Supplier by virtue of being on the Debarment List; or
 - 28.2.3 if before awarding the Agreement, the University knew the Supplier or any Sub-contractor was an Excluded Supplier or an Excludable Supplier; or
 - 28.2.4 if it has consented in writing to the appointment of an Excludable Supplier in advance of that Excludable Supplier being appointed.
- 28.3 Prior to termination under this clause, the University shall first:
- 28.3.1 notify the Supplier of its intention to terminate the Agreement;
 - 28.3.2 Specify which of the grounds detailed at clause 28.1 it is relying on for such purposes and why it has decided to terminate the Agreement (the **"Intention to Terminate Notice"**);

- 28.3.3 give the Supplier a reasonable period (such period being detailed in the Intention to Terminate Notice) to respond to the Intention to Terminate Notice; and
 - 28.3.4 in the context of termination in accordance with clauses 28.1.2 and 28.1.3 only, give the Supplier a reasonable period (such period being detailed in the Intention to Terminate Notice) to cease its arrangement with the Associated Person or relevant Sub-contractor (as applicable) and, if necessary, find a replacement.
- 28.4 Without prejudice to any other rights that the University may have under this Agreement, in the event that the Supplier fails to cease its arrangement with the Associated Person or relevant Sub-contractor, and fails to find a replacement in accordance with clause 28.3.4 within the timeframe detailed in the Intention to Terminate Notice, the University shall be entitled to elect to terminate only that part of the Agreement which relates to the Supplies and/or Services (as applicable) performed by the affected Associated Person or Sub-contractor.

29. TERMINATION FOR BREACH

- 29.1 Without prejudice to any other termination rights that the University may have under this Agreement, and without prejudice to the terms of clause 11.3, the University may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:
- 29.1.1 if the Supplier is in material breach of any obligation under this Agreement provided that if the breach is capable of remedy, the University may only terminate this agreement under this clause 29.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the University (a **Remediation Notice**) to do so;
 - 29.1.2 if a Consistent Failure has occurred;
 - 29.1.3 if a Catastrophic Failure has occurred;
 - 29.1.4 if a resolution is passed or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver, administrator or administrative receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or equipment;
 - 29.1.5 if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
 - 29.1.6 if a person becomes entitled to appoint a receiver over any of the assets of the Supplier;
 - 29.1.7 if the holder of a qualifying floating charge over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
 - 29.1.8 if the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
 - 29.1.1 if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Supplier to which the University reasonably objects.
- 29.2 If this Agreement is terminated by the University for cause such termination shall be at no loss or cost to the University and the Supplier hereby indemnifies the University against any such losses or costs which the University may suffer as a result of any such termination for cause.

- 29.3 The Supplier may terminate this agreement in the event that the University commits a Termination Payment Default by giving 30 days' written notice to the University. In the event that the University remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

30. TERMINATION ON NOTICE & INFECTIVENESS

- 30.1 The University may, at any time, terminate this agreement early on such notice as it considers appropriate in the event that:
- 30.1.1 a challenge to the award of this agreement to the Supplier or to any aspect of the competition leading to award of this agreement is or has been made by any person on the grounds of non-compliance with UK or EU public procurement rules; or
 - 30.1.2 in the sole opinion of the University, the Supplier conducts itself in such a manner so as to cause the University serious reputational damage.
- 30.2 If the University exercises its right of termination pursuant to clause 27.1 it shall pay the Supplier for such performance rendered up to the Termination Date in accordance with the Charges set out in Schedule 5 (Charges and Payment). The Supplier shall not be entitled to any other payment or to any compensation (whether for loss of profit for Services and/or Services (as applicable) not provided or for loss of opportunity or reputation or otherwise) or remedy whatsoever as a result or in respect of early termination of this agreement in accordance with this clause.
- 30.3 In the event of a court making an order setting aside the Agreement (or modification to the Agreement) pursuant to section 104 of the Act, the University shall have no liability to the Supplier other than in respect of performance rendered prior to the date on which such set aside order takes effect, which cost shall be assessed in accordance with the Charges set out in Schedule 5 (Charges and Payment). Under no circumstances shall the Supplier be entitled to any payment or compensation for loss of profit for Services and/or Supplies (as applicable) not provided consequent on such order to set aside, or for loss of opportunity or reputation or breach of statutory duty or otherwise or any other remedy whatsoever as a result or in respect of any such order. The University and the Supplier acknowledge and agree that it is intended that the provisions of this clause 30 and clauses 34 (Consequences of Termination) and 39 (Severability) shall apply as a binding agreement between them which shall, to the extent permissible by law, survive and operate independently of this Agreement notwithstanding any order to set aside this Agreement.

31. FORCE MAJEURE

- 31.1 Subject to the remaining provisions of this clause 31, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 31.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- 31.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - 31.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
 - 31.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 31.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

- 31.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable Supplier should have foreseen and provided for the cause in question.
- 31.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 31.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 31.7 The University may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and/or Supplies (as applicable) and which continues for more than 45 Working Days.
- 31.8 If, due to a Pandemic Event, a party (the "**Affected Party**") is:
- 31.8.1 unable to complete any of its obligations at the time specified by this Agreement; or
- 31.8.2 delayed in carrying out any or part of its obligations under this Agreement,
- the Affected Party shall notify the other party in accordance with clause 31.9.
- 31.9 Each party agrees with the other party that they shall:
- 31.9.1 notify the other party as soon as reasonably practicable (and in any event no later than 10 Working Days) after becoming aware of a Pandemic Event that will:
- (a) prevent completion of its obligations at the time specified by this agreement; or
- (b) prevent or delay the Affected Party from performing any of its other obligations under this Agreement,
- and that notice shall include details of that Pandemic Event;
- 31.9.2 notify the other party as soon reasonably practicable (and in any event no later than 10 Working Days) after any Pandemic Event that was:
- (a) preventing completion of its obligations; or
- (b) preventing or delaying the performance of any other obligations of each party under this Agreement,
- has ceased to have that effect and that notice shall identify the Pandemic Event to which it relates
- ("Pandemic Event Cessation Notice").

32. PREVENTION OF BRIBERY

- 32.1 The Supplier:

- 32.1.1 shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this agreement commit a Prohibited Act;
- 32.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the University, or that an agreement has been reached to that effect, in connection with the execution of this agreement, excluding any arrangement of which full details have been disclosed in writing to the University before execution of this agreement.
- 32.2 The Supplier shall:
- 32.2.1 if requested, provide the University with any reasonable assistance, at the University's reasonable cost, to enable the University to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- 32.2.2 within 40 Working Days of the Contract Start Date, and annually thereafter, certify to the University in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 32 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this agreement. The Supplier shall provide such supporting evidence of compliance as the University may reasonably request.
- 32.3 The Supplier shall have in place an anti-bribery policy (which shall be disclosed to the University) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 32.4 If any breach of clause 32.1 is suspected or known, the Supplier must notify the University immediately.
- 32.5 If the Supplier notifies the University that it suspects or knows that there may be a breach of clause 32.1, the Supplier must respond promptly to the University's enquiries, co-operate with any investigation, and allow the University to audit books, records and any other relevant documentation. This obligation shall continue for 7 years following the expiry or termination of this agreement.
- 32.6 The University may terminate this agreement by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause 32.1. In determining whether to exercise the right of termination under this clause 32.6, the University shall give all due consideration, where appropriate, to action other than termination of this agreement unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:
- 32.6.1 with the University; or
- 32.6.2 with the actual knowledge,
- of any one or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or
- 32.6.3 in circumstances where any one or more of the directors of the Supplier ought reasonably to have had knowledge.
- 32.7 Any notice of termination under clause 32.6 must specify:
- 32.7.1 the nature of the Prohibited Act;

32.7.2 the identity of the party whom the University believes has committed the Prohibited Act; and

32.7.3 the date on which this agreement will terminate.

32.8 Despite clause 17 (Dispute Resolution), any dispute relating to:

32.8.1 the interpretation of this clause 32; or

32.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the University and its decision shall be final and conclusive.

32.9 Any termination under clause 32.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the University.

33. OBLIGATIONS TO ASSIST ON RE-TENDERING

33.1 On reasonable notice, the Supplier shall provide to the University for its use in any future tendering exercise for a Replacement Supplier and/or (subject to the potential Replacement Supplier entering into reasonable written confidentiality undertakings) to its potential Replacement Supplier, the following material and information in order to facilitate the preparation by the University of any invitation to tender and/or to facilitate any potential Replacement Supplier undertaking due diligence:

33.1.1 details of the Services and/or Supplies (as applicable);

33.1.2 if applicable, details of and information relating to the equipment used by the Supplier in the delivery of its obligations (including ownership, make, model and asset number) and details of their condition and physical location;

33.1.3 identification of the equipment that the Supplier will make available to the University or a Replacement Supplier to deliver the Replacement Services and/or Replacement Supplies after expiration of this agreement, together with the price that the Supplier would expect to be paid in respect of these; and

33.1.4 if applicable in accordance with the Specified Terms, all information as detailed in paragraph 3 of Schedule 8 (TUPE).

34. CONSEQUENCES OF TERMINATION

The terms of this Agreement that either explicitly or implicitly are intended to survive, including but not limited to clause 19 (Indemnities), clause 21 (Insurance), clause 22 (Freedom of Information), clause 23 (Data Protection), clause 25 (Audit), and clause 29 (Termination for Breach), shall survive termination or expiration of this Agreement, in whole or in part.

GENERAL PROVISIONS

35. GRATUITIES

The Supplier shall not, whether by itself or by any Supplier's Personnel or Supplier Party, solicit any gratuity or tip or any other form of money-taking or reward, collection or charge for the performance of its obligations except where allowed for elsewhere in this Agreement.

36. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the Term, and for a period of one year thereafter, solicit or engage any senior staff of the other party who have been involved in the performance of this Agreement or the management of this agreement or

any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

37. WAIVER

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the University to the Supplier in respect of the obligations under this Agreement or any omission on the part of the University to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations in accordance with the provisions of this Agreement.

38. CUMULATION OF REMEDIES

Subject to the specific limitations set out in this Agreement, no remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

39. SEVERABILITY

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

40. PARTNERSHIP OR AGENCY, INDEPENDENT CONTRACTOR

- 40.1 Nothing in this agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.
- 40.2 The Supplier is not and shall under no circumstances hold itself out as being an agent of the University.
- 40.3 The Supplier is not and shall in no circumstances hold himself out as being authorised to enter into any contract on behalf of the University or in any other way to bind the University to the performance, variation, release or discharge of any obligation.
- 40.4 The Supplier shall has not and shall in no circumstances hold himself out as having the power to make, vary, discharge or waive any bylaw or regulation of any kind.
- 40.5 The Supplier's Personnel and any Supplier Party shall not hold themselves out to be and shall not be held out by the Supplier as being employees or agents of the University for any purposes.

41. THIRD PARTY RIGHTS

- 41.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 41.2 Notwithstanding clause 41.1, it is expressly agreed that the parties to this Agreement may by mutual agreement rescind or vary this Agreement or any term without the consent of any person who has a right to enforce the Agreement or the term in question, notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

42. PUBLICITY

42.1 The Supplier shall not:

42.1.1 make any press announcements or publicise this agreement or its contents in any way; or

42.1.2 use the University's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the University.

43. NOTICES

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

44. ENTIRE AGREEMENT

This Agreement, Schedules and documents annexed to it or otherwise referred to in the Agreement constitute the entire agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

45. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

46. GOVERNING LAW AND JURISDICTION

46.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of Northern Ireland.

46.2 The parties irrevocably agree that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

SCHEDULE 1

TERMS AND CONDITIONS - SERVICES

1. DEFINITIONS

1.1 In this Schedule, and wherever used elsewhere in the Agreement, the following definitions shall apply:

“Achieved Service Levels”	in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in the Specification).
“Default Notice”	has the meaning given to it in clause 2.4 of this Schedule 1.
“Exit Plan”	The plan to be prepared by the Supplier pursuant to Schedule 1 (Exit Plan).
“Hourly Rates”	The hourly rates set out in Schedule 5 (Charges and Payment), as may be altered from time to time in accordance with the Performance Review Meetings section of the Specified Terms.
“Service Credits”	the sums attributable to a Service Failure as specified in the Specification.
“Service Commencement Date”	has the meaning given to it in the Specified Terms.
“Service Failure”	a failure by the Supplier to provide the Services in accordance with any individual Service Level measured on a monthly basis.
“Supplier Equipment”	any materials, plant or equipment owned or held by the Supplier or any Supplier Party and provided by the Supplier or any Supplier Party for use in providing the Services.
“Termination Assistance Notice”	has the meaning given to it in clause 9.8 of this Schedule.
“Termination Assistance Period”	the period specified in the Termination Assistance Notice in which the Supplier shall provide the Termination Services as may be extended pursuant to clause 9.9 of this Schedule.
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in clause 9.13 of this Schedule and any other services required pursuant to the Termination Assistance Notice.
“Transferred Equipment”	any equipment which is to be transferred in accordance with clause 6 of this Schedule and as more particularly specified in Schedule 3 (Specification).
“University Assets”	any materials, plant or equipment owned or held by the University and provided by the University for use in providing the Services including those items identified in the Specification.

- 1.2 For the avoidance of doubt, terms defined in the General Conditions shall have the same meaning when used in this Schedule, unless otherwise defined herein.

2. PROVISION OF SERVICES

- 2.1 The Supplier shall comply with its obligations and perform the tasks allocated to it under the Agreement from the Contract Start Date in accordance with the provisions of this Agreement in order to ensure that it is in a position to commence delivery of the Services from the Service Commencement Date.

- 2.2 The Supplier shall provide the Services to the University with effect from the Service Commencement Date for the duration of this agreement and shall ensure that the Services:

2.2.1 comply in all respects with the requirements set out in Schedule 3 (Specification); and

2.2.2 are supplied in accordance with Schedule 4 (Supplier's Solution) and the provisions of this agreement.

- 2.3 In the event that the Supplier fails to commence delivery of the Services on the Service Commencement Date, then without prejudice to the University's right to terminate this agreement pursuant to clause 29.1 of the General Conditions, and without prejudice to the terms of clause 11.3 of the General Conditions, the parties will meet to agree a new date from which the Supplier shall commence delivery of the Services provided that:

2.3.1 there will be no obligation on the University to pay the Charges in respect of Services not delivered by the Supplier;

2.3.2 this shall have no impact on the University's ability to bring a claim due to the Supplier's breach of clause 2.2 above; and

2.3.3 there shall be no change to the Initial Term.

- 2.4 In the event that the Supplier does not comply with the provisions of clauses 2.1 or 2.2 above in any way, and without prejudice to the terms of clause 28 of the General Conditions, the University may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

- 2.5 For the avoidance of doubt, the University and the Supplier shall comply with all of their obligations as specified in Schedule 3 (Specification) for the duration of this agreement.

- 2.6 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the University by the Supplier in connection with the supply of the Services and shall pay the University any extra costs occasioned by any discrepancies, errors or omissions therein.

Provision of additional staff in special circumstances

- 2.7 In addition to the Supplier's obligations to deliver the Services, the University may request the Supplier to provide additional staff support in special circumstances. In such circumstances the University will endeavour to give the Supplier at least one week's notice of such requirements. Any such requests for additional staff support must be authorised by the University's Contract Manager, prior to the Supplier providing any additional staff support.

- 2.8 Following authorisation of the request for additional staff support, the Supplier shall provide appropriately qualified additional staff to meet the University's request. Such additional staff, shall comply with all provisions of this agreement as if they were employed in the delivery of

the Services. The Supplier will charge the University for the provision of such additional staff on the basis of the appropriate Hourly Rates.

3. SERVICE LEVELS

- 3.1 Where any Service is stated in the Specification to be subject to a specific Service Level, the Supplier shall provide that Service in such a manner as will ensure that the Achieved Service Level in respect of that Service is equal to or higher than such specific Service Level.
- 3.2 As existing Services may be varied from time to time and new Services added, Service Levels for the same will be determined and included within the Specification. Service Levels will be reviewed and amended on an ongoing basis to ensure the services delivered meet the changing needs of the University.
- 3.3 The Supplier shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in the Specification.
- 3.4 In the event that any Achieved Service Level falls short of the relevant Service Level, without prejudice to any other rights the University may have, the provisions of paragraph 5.3 of the Specification (Service Credits) shall apply. If the Supplier fails to provide the Services in accordance with any individual Service Level measured on a monthly basis, the Supplier shall pay to the University the Service Credit as detailed in the Specification.
- 3.5 The parties agree that any Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the University. The Supplier has taken the Service Credit into account in setting the level of the Charges.

4. SERVICE STANDARDS

- 4.1 Without prejudice to clause 3 of this Schedule, the Supplier shall provide the Services, or procure that they are provided:
 - 4.1.1 with reasonable skill and care and in accordance with the Best Industry Practice from time to time;
 - 4.1.2 in all respects in accordance with the University's policies, values and commitment to sustainability as set out or referred to in Schedule 3 (Specification);
 - 4.1.3 in a manner that assists the University to reduce its environmental impacts in the areas of energy and water conservation and waste reduction (including through the implementation of those measures specified in the Supplier's Tender;
 - 4.1.4 in accordance with all applicable laws.

5. EQUIPMENT

- 5.1 Notwithstanding that the University may provide the Supplier with certain University Assets and Transferred Equipment, the Supplier shall be responsible for providing all the equipment necessary for the supply of the Services.
- 5.2 All Supplier Equipment brought onto the University's Premises shall be at the Supplier's own risk and the University shall have no liability for any loss of or damage to any equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the University's Default. The Supplier shall provide for the haulage or carriage thereof to the University's Premises and the removal of Supplier Equipment and Transferred Equipment when no longer required at its sole cost. Unless otherwise agreed, Supplier Equipment brought onto the University's Premises will remain the property of the Supplier or the Supplier Party as the case may be.

- 5.3 The Supplier shall maintain all items of Supplier Equipment within the University's Premises in a safe, serviceable and clean condition.
- 5.4 The Supplier shall, at the University's written request, at its own expense and as soon as reasonably practicable:
- 5.4.1 remove from the University's Premises any Supplier Equipment which in the reasonable opinion of the University is either hazardous, noxious or not in accordance with this agreement; and
- 5.4.2 replace such item with a suitable substitute item of equipment.
- 5.5 On completion of the Services the Supplier shall remove the Supplier Equipment together with any other materials used by the Supplier to supply the Services and shall leave the University's Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the University's Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier, the Supplier's Personnel or any Supplier Party.

6. TRANSFERRED EQUIPMENT

- 6.1 The Transferred Equipment shall be transferred from the University to the Supplier in accordance with, and subject to, the terms and conditions set out in this clause and Schedule 3 (Specification). However, (notwithstanding anything contained in Schedule 3 (Specification)), the Supplier acknowledges that the Transferred Equipment is supplied by the University on an "as is" basis and the University makes no representation or warranty as to the merchantability, condition, quality, suitability or fitness for any purpose of the Transferred Equipment. The Supplier shall satisfy itself in relation to each item of Transferred Equipment as to whether it is suitable for use in providing the Services.
- 6.2 Nothing in this clause 6 shall relieve the Supplier from its obligations under clause 2 above.
- 6.3 The Supplier acknowledges that the University Data and/or any databases generated or used as part of the Services are the property of the University and the University hereby reserves all Intellectual Property that may subsist in the University Data and/or any databases generated or used as part of the Services.

7. UNIVERSITY ASSETS

- 7.1 Subject to the requirements of clauses 33 and clause 9 of Schedule 1 and the Exit Plan, in the event of the expiry or termination of the agreement, the University shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the University's Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.
- 7.2 Subject to the terms of this clause 7, the University shall provide University Assets free of charge in accordance with this agreement for the use of the Supplier in the performance of its obligations under this agreement.
- 7.3 In respect of any computer software that comprises part of the University Assets, the Supplier acknowledges that (notwithstanding anything contained in Schedule 3 (Specification)) the transfer and use of same may be prohibited or restricted (for example, by the terms of the software licence between the University and a third party). In such circumstances, the University shall use its reasonable endeavours to enable the Supplier to use the software for the purposes of providing the Services including liaising with the relevant third parties in connection with novating, assigning, sub-licensing or otherwise transferring to the Supplier the right to use the software for the said purpose. Nothing in this clause 7 shall:
- 7.3.1 relieve the Supplier from its obligations under clause 2;

- 7.3.2 impose any obligation on the University to do anything that might prejudice or restrict its right to use the software in question for any purpose; or
 - 7.3.3 constitute a warranty or representation that the University has the right to transfer the software to the Supplier and/or the right to novate, assign or sub-licence the right to use the software to the Supplier.
- 7.4 All University Assets shall remain the property of the University and shall be used only for the purposes of providing the Services. However the Supplier acknowledges that University Assets are supplied by the University on an “as is” basis and the University makes no representation or warranty as to the merchantability, condition, quality, suitability or fitness for any purpose of University Assets. The Supplier shall have satisfied itself pursuant to the due diligence requirements of clause 4.3 of the General Conditions that each University Asset is suitable for use in providing the Services. In the event that any University Assets are subsequently found by the Supplier not to be suitable for use, the Supplier shall not be entitled to recover any additional costs or charges from the University. The Supplier shall be responsible for the cost of ensuring that the University Assets are suitable for use in providing the Services.
- 7.5 The Supplier shall notify the University within 20 Working Days (or as otherwise agreed between the parties) of receipt of any University Assets if any University Asset is not in good condition when received by or on behalf of the Supplier.
- 7.6 The Supplier undertakes the safe custody of and due return of all University Assets (either on request, termination or expiry of this agreement) and shall be responsible for all loss thereof which is caused by the Supplier and shall indemnify the University against such loss.
- 7.7 The Supplier shall be responsible for any deterioration in the University Assets which is caused by the Supplier save for any deterioration resulting from its normal and proper use for the purposes of this agreement provided that such deterioration resulting from normal and proper use is not contributed to by any want of due maintenance and repair.
- 7.8 The University and the Supplier shall maintain, repair and replace the University Assets, on the basis specified in Schedule 3 (Specification). However, where such maintenance, repair or replacement arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the University in maintaining, repairing or replacing the same shall be recoverable from the Supplier as a debt.
- 7.9 Neither the Supplier, nor any Supplier Party, nor any other person, shall have a lien on any University Assets for any sum due to the Supplier, Supplier Party or other person and the Supplier shall take all reasonable steps to ensure that the title of the University and the exclusion of any such lien are brought to the notice of all Supplier Parties, Supplier's Personnel and other people dealing with any University Assets.
- 7.10 The Supplier shall, upon receipt of any item supplied directly or indirectly by the University, including but not limited to University Assets, and/or Transferred Equipment, ensure (including undertaking all necessary due diligence research to ensure) that throughout the Term such items are only used by the Supplier, the Supplier's Personnel and any Supplier Party or any other person:
- 7.10.1 in strict accordance with the terms and limitations of any relevant licences;
 - 7.10.2 with any necessary authorities and/or permissions from relevant third parties;
 - 7.10.3 subject to and in accordance with any legal constraints or conditions of use; and
 - 7.10.4 in accordance with any relevant technical specifications or operating manuals relating to an item.
- 7.11 The Supplier shall ensure that:

- 7.11.1 where using the University's Premises and any University Assets they are kept properly secure and it will comply and cooperate with the University's Contract Manager's reasonable directions regarding the security of the same;
 - 7.11.2 only those of the Supplier's Personnel that are duly authorised to enter upon the University's Premises for the purposes of providing the Services, do so;
 - 7.11.3 any University Assets used by the Supplier are only used for the purposes of delivering the Services and are not removed from University Premises unless expressly permitted under this agreement or by the University's Contract Manager.
- 7.12 The Supplier shall notify the University immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the University, to any of the University's Premises or to any property of any other recipient of the Services in the course of providing the Services or providing the Supplies.

8. CHARGES AND PAYMENT

In addition to the provisions of clause 9.2 of the General Conditions, the Supplier shall separately invoice the University for payment of any charges due in respect of additional staff support, requested by the University in accordance with clauses 2.7 and 2.8 of this Schedule, on the basis of the Hourly Rates within thirty (30) days of the last day of provision of such additional staff in relation to a specific circumstance. The Supplier shall direct all invoices to the University's Finance Office at Coleraine, which shall, upon request of the University, include the Commodity Code(s) in respect of the Supplies to be considered valid. Any credits (Service Credits or others) which have been accrued in the previous monthly period should be submitted separately.

9. TERMINATION SERVICES

General

- 9.1 During the Termination Assistance Period or such shorter period as the University may require, the Supplier will continue to provide the Services (as applicable) and will, at the request of the University pursuant to clause 9.8 below, provide the Termination Services.
- 9.2 During the Termination Assistance Period, the Supplier will, in addition to providing the Services and the Termination Services, provide to the University any reasonable assistance requested by the University to allow the Services to continue without interruption following the termination or expiry of this agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the University and/or its Replacement Supplier.
- 9.3 During the Termination Assistance Period, the Services and the Termination Services will be provided at no detriment to the Service Levels, save to the extent that the parties agree otherwise in accordance with clause 9.4 below.
- 9.4 Where the Supplier demonstrates to the University's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet a particular Service Level(s), the parties shall vary the relevant Service Level(s) and/or the applicable Service Credits to take account of such adverse effect.
- 9.5 The parties acknowledge that the migration of the Services from the Supplier to the University and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 9.6 Within 30 days after service of notice of termination by either party or no less than six months prior to the expiry of this agreement, the Supplier will submit for the University's approval the Exit Plan in a final form that could be implemented immediately.

- 9.7 The parties will meet and use their respective reasonable endeavours to agree the contents of the final form Exit Plan. If the parties are unable to agree the contents of the Exit Plan within 30 days following its delivery to the University then such dispute shall be resolved in accordance with clause 17 of the General Conditions (Dispute Resolution). Until the agreement of the final form Exit Plan, the Supplier will provide the Termination Services in accordance with the principles set out in this schedule and the last approved version of the Exit Plan (insofar as this still applies).

Notification of Requirements for Termination Services

- 9.8 The University shall be entitled to require the provision of Termination Services by notifying the Supplier in writing (**Termination Assistance Notice**) at least four months prior to the date of termination or expiry of this agreement or as soon as reasonably practicable (but in any event, not later than one month) following the service by either party of any notice to terminate. The Termination Assistance Notice shall specify the:
- 9.8.1 date from which Termination Services are required which shall be no earlier than 12 months prior to expiry of this agreement or from the service by either party of any notice to terminate, as the case may be;
 - 9.8.2 the nature of the Termination Services required; and
 - 9.8.3 the period during which it is anticipated that Termination Services will be required which shall continue no longer than 24 months after the date that the Supplier ceases to provide the Services.
- 9.9 The University shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than six months after the date the Supplier ceases to provide the Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The University shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Obligations

- 9.10 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 9.11 At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule):
- 9.11.1 the Supplier will erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all University Data;
 - 9.11.2 the Supplier will return to the University such of the following as is in the Supplier's possession or control:
 - (a) all copies of any software licensed by the University to the Supplier under this agreement;
 - (b) all materials created by the Supplier under this agreement, the Intellectual Property in which is owned by the University;
 - (c) any parts of the ICT environment and any other equipment which belongs to the University; and
 - (d) any items that have been on-charged to the University, such as consumables;

- 9.11.3 the Supplier shall vacate any of the University's Premises; and
 - 9.11.4 each party will return to the other party all Confidential Information of the other party and will certify that it does not retain the other party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the party in question for the purposes of providing or receiving any Services or Termination Services.
- 9.12 Except where this agreement provides otherwise, all licences, leases and authorisations granted by the University to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

Scope of the Termination Services

- 9.13 The Termination Services to be provided by the Supplier shall include (without limitation) such of the following services as the University may specify:
- 9.13.1 providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
 - 9.13.2 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
 - 9.13.3 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
 - 9.13.4 making available to the University and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of materials by such staff as are nominated by the University (acting reasonably) at the time of termination or expiry. A documented plan is to be separately provided for this activity and agreed with the University at the time of termination or expiry;
 - 9.13.5 answering all reasonable questions from the University and/or its Replacement Supplier regarding the Services;
 - 9.13.6 the provision of access to the University and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six months afterwards for the purpose of the smooth transfer of the Services to the University and/or the Replacement Supplier:
 - (a) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (b) following reasonable notice and during the Supplier 's normal business hours, to members of the Supplier's Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.
- 9.14 Where there is any dispute between the parties regarding the manner in which the Termination Services are to be performed, such dispute shall be resolved in accordance with clause 17 (Dispute Resolution).

SCHEDULE 2

TERMS AND CONDITIONS – SUPPLIES

1. DEFINITIONS

- 1.1 In this Schedule, and wherever used elsewhere in the Agreement, the following definitions shall apply:

“Default Notice” has the meaning given to it in clause 3.5.1 of this Schedule.

“Initial Supplies Delivery Date” the date when the delivery of Supplies shall commence, as specified in the Specified Terms.

“TSS” means the UK government trader support scheme established to facilitate the movement of goods between Great Britain and Northern Ireland.

- 1.2 For the avoidance of doubt, terms defined in the General Conditions shall have the same meaning when used in this Schedule, unless otherwise defined herein.

2. EXPORT, TRANSIT AND IMPORT OF SUPPLIES

- 2.1 Subject to as otherwise may be agreed with the University as set out in Schedule 3 (Specification), the Supplier must, at its own cost, discharge all export, transit and import clearance formalities and comply with all laws and regulations required by the countries of export, transit and import in respect of the Supplies. Such clearance formalities shall include but not limited to the following:

2.1.1 the Supplier obtaining such export and import licences and consents in relation to the Supplies as are required from time to time. If required by the University, the Supplier shall make the particulars of such Necessary Consents available to the University prior to the relevant delivery;

2.1.2 the Supplier completing all acts necessary in relation to all security clearances for the export, transit and import of the Supplies;

2.1.3 subject to clause 9.11 of the General Conditions in respect of the payment of VAT, discharge all import duties, tariffs, clearance charges, taxes, brokers' fees and other amounts payable in connection with the export, transit and import of the Supplies;

2.1.4 the Supplier discharging all obligations arising from pre-shipment inspections in respect of the Supplies, including measuring, quality, weighing and counting checks;

2.1.5 all other acts required to obtain the requisite official authorisation arising in connection with the export, transit and import of the Supplies.

- 2.2 The Supplier undertakes to attend to and complete in a proper and efficient manner all necessary documents and formalities in connection with the export, transit and import of Supplies, pursuant to the obligations at clause 2.1 above.

- 2.3 Notwithstanding clauses 2.1 and 2.2, in the event the Supplier uses the TSS to facilitate the movement of the Supplies to the University Premises, the University agrees to submit any supplementary import declarations required.

3. PROVISION OF SUPPLIES

- 3.1 The Supplier warrants that:

- 3.1.1 It has full unencumbered legal and beneficial title to all the Supplies;
- 3.1.2 it has full capacity and authority to enter into this agreement; and
- 3.1.3 at the date of delivery of any of the Supplies it will have full and unrestricted right, power and authority to sell, transfer and deliver all of the Supplies to the University.
- 3.2 The Supplier shall comply with its obligations and perform the tasks allocated to it under the Agreement from the Contract Start Date in accordance with the provisions of this agreement in order to ensure that it is in a position to commence delivery of the Supplies from the Initial Supplies Delivery Date.
- 3.3 The Supplier shall provide the Supplies to the University with effect from the Initial Supplies Delivery Date for the duration of this agreement and shall ensure that the Supplies:
 - 3.3.1 comply in all respects with the requirements set out in Schedule 3 (Specification);
 - 3.3.2 are supplied in accordance with Schedule 4 (Supplier's Solution) and the provisions of this agreement;
 - 3.3.3 be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after delivery;
 - 3.3.4 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Supplies;
 - 3.3.5 conform with the specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
 - 3.3.6 be free from design defects; and
 - 3.3.7 be fit for any purpose held out by the Supplier or made known to the Supplier by the University expressly or by implication, and in this respect the University relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the University of any designs provided by the Supplier will not relieve the Supplier of any of its obligations under this sub-clause.
- 3.4 In the event that the Supplier fails to commence delivery of the Supplies on the Initial Supplies Delivery Date, then without prejudice to the University's right to terminate this agreement pursuant to clause 29.1 of the General Conditions, and without prejudice to the terms of clause 11.3 of the General Conditions, the parties will meet to agree a new date from which the Supplier shall commence delivery of the Supplies provided that:
 - 3.4.1 there will be no obligation on the University to pay the Charges in respect of Supplies not delivered by the Supplier;
 - 3.4.2 this shall have no impact on the University's ability to bring a claim due to the Supplier's breach of clause 3.2 above;
 - 3.4.3 there shall be no change to the Initial Term.
- 3.5 In the event that the Supplier does not comply with the provisions of this clause 3 in any way, the University may:

- 3.5.1 serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**); and/or
- 3.5.2 reject any of the Supplies which fail to conform to the approved sample or fail to meet the Specification set out in Schedule 3. Such notice shall be given within a reasonable time after delivery to the University of such Supplies. If the University rejects any of the Supplies pursuant to this clause the University may (without prejudice to other rights and remedies) either:
- (a) have such Supplies promptly, and in any event within five Working Days, either repaired by the Supplier or replaced by the Supplier with Supplies which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred;
 - (b) treat this Agreement as discharged by the Supplier's breach and obtain a refund (if payment for the Supplies has already been made) from the Supplier in respect of the Supplies concerned together with payment of any additional expenditure reasonably incurred by the University in obtaining other Supplies in replacement provided that the University uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Supplies.
- 3.5.3 For the avoidance of doubt, the University and the Supplier shall comply with all of their obligations as specified in Schedule 3 for the duration of this agreement.
- 3.5.4 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the University by the Supplier in connection with the supply of the Supplies and shall pay the University any extra costs occasioned by any discrepancies, errors or omissions therein.

4. SUPPLIES AND DELIVERY

- 4.1 The Supplier hereby guarantees the Supplies for the period from the date of delivery to the date 12 months thereafter or as otherwise specified in the Specification or Tender, against faulty materials or workmanship. If the University shall within such guarantee period or within 25 Business Days thereafter give notice in writing to the Supplier of any defect in any of the Supplies as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the University may have) promptly remedy such defects (whether by repair or replacement as the University shall elect) free of charge.
- 4.2 Any Supplies rejected or returned by the University as described in clause 4.1 above shall be returned to the Supplier at the Supplier's risk and expense.
- 4.3 The University reserves the right to substitute to new or improved products should these be developed by the Supplier during the period of agreement and where alternative sources of supply become available these will be considered by the University in relation to value for money and the University reserves the right to consider same.
- 4.4 The University's right of rejection shall continue irrespective of whether the University has in law accepted the Supplies. In particular, taking delivery, inspection, use or payment by the University of the Supplies or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right of remedy that the University may have against the Supplier, provided that the right of rejection shall cease within a reasonable time from the date on which the University discovers or might reasonably be expected to discover the latent defect or other relevant breach of contract.
- 4.5 If any Supplies provided to the University were procured or obtained by the Supplier from third parties, then any guarantees, warranties, benefits or indemnities which the agreement holds from such third parties in respect of those Supplies will be held on trust for the University. In

the event of the Supplies being recalled, initiated by the manufacturer of the Supplies, the Secretary of State for Health or Medicines and Healthcare products Regulatory Organisation (or any such similar regulatory body), the Supplier shall, without delay and at its own expense, arrange for the collection of such Supplies and credit the University for any Supplies delivered but unused by the University including part used packs.

- 4.6 The Supplier will deliver the Supplies to the University Premises (or other such collection point pursuant to clause 4.11 below) on the delivery date and at the time specified in the Specification or any relevant purchase order. At the point of delivery, the Supplier shall have cleared the Supplies for export, transit and import, pursuant to clause 2.1 above.
- 4.7 Each delivery of the Supplies will be accompanied by a delivery note which shows the purchase order number and the type and quantity of the Supplies.
- 4.8 In particular the Supplies shall be marked with the contract number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Supplies (and all documents relating thereto) shall bear prominent and adequate warnings.
- 4.9 Where any access to the University Premises is necessary in connection with delivery or installation the Supplier and his Sub-contractors will at all times comply with the reasonable requirements of the University's security arrangements.
- 4.10 Time of delivery shall be of the essence and if the Supplier fails to deliver the Supplies within the time promised or specified in the Specification, the University may release itself from any obligation to accept and pay for the Supplies and/or terminate the agreement, in either case without prejudice to any other rights and remedies of the University.
- 4.11 Unless otherwise stated in the Specification, where the Supplies are delivered by the Supplier, the point of delivery shall be when the Supplies are removed from the transporting vehicle at the University Premises and situated or installed in accordance with clause 4.12 below. Where the Supplies are collected by the University, the point of delivery shall be when the Supplies are loaded on the University's vehicle.
- 4.12 Except where otherwise agreed in writing, delivery shall include the unloading, stacking or installation of the Supplies by the Supplier's staff or the Supplier's Suppliers or carriers at such place as the University or duly authorised person shall reasonably direct.
- 4.13 Title and risk in the Supplies shall, without prejudice to any other rights or remedies of the University pass to the University at the time of acceptance of delivery.
- 4.14 The University shall be under no obligation to accept or pay for any Supplies delivered in excess of the quantity ordered. If the University elects not to accept such over-delivered Supplies it shall give notice in writing to the Supplier to remove them within 5 Business Days and to refund to the University any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Supplies), failing which the University may dispose of such Supplies and charge the Supplier for the costs of such disposal. The risk in any over-delivered Supplies shall remain with the Supplier unless they are accepted by the University.
- 4.15 The University shall be under no obligation to accept or pay for any Supplies supplied earlier than the date for delivery stated in the Specification.
- 4.16 Unless expressly agreed to the contrary, the University shall not be obliged to accept delivery by instalments. If, however, the University does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the University, entitle the University to terminate the whole of any unfulfilled part of this agreement without further liability to the University.

- 4.17 Without prejudice, the University shall be at liberty to charge an administration fee, not in excess of 10% of the gross cost of any other Supplies purchased, as a result of a breach of this clause 4. Such administration fees shall be in addition to any charge levied under this clause 4.
- 4.18 In the case of non-delivery the University shall, provided that the University has been advised in writing of the dispatch of the Supplies, within 10 days of the notified date of delivery give notice to the Supplier that the Supplies have not been delivered.
- 4.19 On dispatch of any consignment of the Supplies the Supplier shall send the University an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Supplies, having been placed in transit, provided that the University has been advised in writing of the dispatch of the Supplies, within 10 Working Days of the notified date of delivery, give notice to the Supplier that the Supplies have not been delivered and may request the Supplier free of charge to deliver substitute Supplies within the timescales specified by the University or terminate this agreement.
- 4.20 Failure by the Supplier to deliver the Supplies or any part of them within the time agreed shall entitle the University to terminate this agreement and purchase other Supplies of the same or similar description to make good such default and recover from the Supplier the amount by which the cost of purchasing other Supplies exceeds the amount that would have been payable to the Supplier in respect of the Supplies replaced by such purchase provided that the University uses all reasonable endeavours to mitigate its losses in this respect.

5. PACKAGING

- 5.1 The Supplies will be packed and marked in a proper manner and in accordance with the University's instructions and any statutory requirements (including labelling requirements where applicable CE and UKNI marks) accompanied with any other relevant risk, safety and emergency information written in English and any requirements of the carriers tasked by the Supplier with delivering the Supplies.
- 5.2 All packaging materials will be consistent with the University's environmental policy and considered non-returnable.

6. CHARGES AND PAYMENT

In addition to the provisions of clause 9 of the General Conditions, and except as set out at clause 9.11 of the General Conditions, the Charges payable by the University shall not include all import duties, tariffs, clearance charges, taxes, brokers' fees and other amounts payable in connection with the export, transit and import of the Supplies, which, for the avoidance of doubt shall be discharged by the Supplier directly in accordance with clause 2.1.3 of this Schedule, unless otherwise agreed in writing by the University.

7. CANCELLATION OF SUPPLIES

Without prejudice to any other right that the University may have under this Agreement, the University shall have the right to cancel any order for the Supplies, or any part of the Supplies, which have not yet been delivered to the University. The cancellation will be notified in writing. Without prejudice to the generality of the foregoing, the University will pay the Charges (or where applicable, that part of the Charges) for Supplies which have been delivered to the University or at the date of the notice of cancellation are in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Supplies and which cannot be used for other orders or be returned to the suppliers of those materials for a refund.

SCHEDULE 3

SPECIFICATION

[DRAFTING NOTE: THIS WILL BE DERIVED FROM THE SPECIFICATION INCLUDED AS DOCUMENT 3 OF THE INVITATION TO TENDER. INCLUDE ANY CLARIFICATION RESPONSES WHICH AFFECT THE SPECIFICATION IF NOT ALREADY INCORPORATED INTO AN UPDATED VERSION OF THE SPECIFICATION.]

SCHEDULE 4– SUPPLIER’S SOLUTION

[DRAFTING NOTE: THIS WILL BE DERIVED FROM THE SUPPLIER’S TENDER]

SCHEDULE 5 – CHARGES AND PAYMENT

1. CHARGES

1.1 The below Charges are inclusive of all costs in respect of the Supplies and/or Services provided under the Agreement:

- (a) ***[DRAFTING NOTE: THE CALCULATION OF CHARGES AND PAYMENTS SHALL BE DEPENDENT UPON THE SPECIFICATION AND TENDER SUBMISSION DEVISED ON A CASE BY CASE BASIS]***

SCHEDULE 6- EXIT PLAN

PART 1 – GENERAL

[IF THIS SCHEDULE DOES NOT APPLY TO THIS AGREEMENT, PLEASE ENSURE THAT YOU REMOVE IT FROM THE “APPLICABLE SCHEDULES” SECTION IN THE SPECIFIED TERMS]

1. DEFINITIONS

- 1.1 In this Schedule, and wherever used elsewhere in the Agreement, the following definitions shall apply:

“Emergency Exit” any termination of this agreement which is a (i) termination of the whole or part of this agreement in accordance with clause 28 or clause 29, except where the period of notice given under that clause is greater than or equal to six months; (ii) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to clause 28, clause 29 or clause 30; or (iii) wrongful termination or repudiation of this agreement by either party.

“Ordinary Exit” any termination of this agreement which occurs: (i) pursuant to clause 28, clause 29 or clause 30 of the General Conditions where the period of notice given by the party serving notice to terminate pursuant to such clause is greater than or equal to six months; or (ii) as a result of the expiry of the Term.

- 1.2 For the avoidance of doubt, terms defined in the General Conditions and Schedule 1 shall have the same meaning when used in this Schedule, unless otherwise defined herein.

2. GENERAL

- 2.1 The Supplier will, within six months after the Contract Start Date, deliver to the University an Exit Plan which sets out the Supplier's proposed methodology for achieving an orderly transition of Services from the Supplier to the University and/or its Replacement Supplier on the expiry or termination of this agreement and which complies with the requirements set out in clauses 2.2 and 2.3 below. Within 60 days after the submission of the Exit Plan, the parties will use their respective reasonable endeavours to agree the contents of the Exit Plan. If the parties are unable to agree the contents of the Exit Plan then such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 2.2 The Exit Plan will contain, as a minimum:

- (a) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the University shall require to enable the University or its subcontractors to provide the Services;
- (b) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit; and
- (c) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit.

2.3 In addition, the Exit Plan shall:

- (a) document how the Services will transfer to the Replacement Supplier and/or the University, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the University's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- (b) specify the scope of the Termination Services that may be required for the benefit of the University (including such of the services set out in clause 9.13 of Schedule 1 as are applicable) and detail how such services would be provided (if required), during the Termination Assistance Period;
- (c) set out procedures to deal with requests made by the University and/or a Replacement Supplier for Staffing Information pursuant to Schedule 8;
- (d) address each of the issues set out in this schedule to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the University with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period;
- (e) provide a timetable and identify critical issues for providing the Termination Services; and
- (f) set out the management structure to be put in place and employed during the Termination Assistance Period.
- (g) The Supplier will review and (if appropriate) update the Exit Plan prior to each Formal Performance Review (commencing with the second Contract Year) to reflect changes in the Services. Following such update the Supplier will submit the revised Exit Plan to the University for review. Within 30 days following submission of the revised Exit Plan, the parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in this clause 2 and the changes that have occurred in the Services since the Exit Plan was last agreed. If the parties are unable to agree the contents of the revised Exit Plan within that 30 day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

PART 2 – THE EXIT PLAN

1. *[DRAFTING NOTE: EXIT PLAN TO BE PREPARED AND INCLUDED IN ACCORDANCE WITH PART 1 OF SCHEDULE 9 ABOVE. IF THIS SCHEDULE DOES NOT APPLY TO THIS AGREEMENT, PLEASE ENSURE THAT YOU REMOVE IT FROM THE “APPLICABLE SCHEDULES” SECTION IN THE SPECIFIED TERMS]*

SCHEDULE 7 – CONTRACT MOBILISATION PLAN

[DRAFTING NOTE: NOTE THAT, IF APPLICABLE, THE CONTRACT MOBILISATION PLAN MAY NEED TO BE REFINED POST SUPPLIER'S TENDER SUBMISSION AND IF:

- (A) THERE IS NO CHANGE TO THE SUPPLIER'S SUBMISSION, THEN THIS SCHEDULE WILL NOT APPLY***
- (B) THERE IS A CHANGE TO THE CONTRACT MOBILISATION PLAN COMPARED TO THE SUPPLIER'S TENDER SUBMISSION, THIS SCHEDULE WILL APPLY***

IF THIS SCHEDULE DOES NOT APPLY TO THIS AGREEMENT, PLEASE ENSURE THAT YOU REMOVE IT FROM THE "APPLICABLE SCHEDULES" SECTION IN THE SPECIFIED TERMS. HOWEVER, DO NOT REMOVE THIS SCHEDULE, SIMPLY MARK IT AS NOT APPLICABLE.]

SCHEDULE 8 – TUPE

[IF THIS SCHEDULE DOES NOT APPLY TO THIS AGREEMENT, PLEASE ENSURE THAT YOU REMOVE IT FROM THE “APPLICABLE SCHEDULES” SECTION IN THE SPECIFIED TERMS]

1. DEFINITIONS

1.1 In this Schedule, and wherever used elsewhere in the Agreement, the following definitions shall apply:

“Auto-Enrolment Requirements”	means the requirements under the 2008 Act dealing with automatic enrolment and under the relevant associated regulations promulgated under the 2008 Act including the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 and the Employers’ Duties (Implementation) Regulations (Northern Ireland) 2010 and such other related or subsequent applicable regulations as may be prescribed from time to time under the 2008 Act.
“Current Services”	the facilities services carried out by the Incumbent Employer.
“Effective Date”	the date(s) on which the Current Services (or any part of the Current Services) transfer from the Incumbent Employer to the Supplier or Sub-Contractor, and a reference to Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Supplier or Sub-Contractor.
“Employee Liability Information”	the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE.
“Employment Liabilities”	all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality Commission for Northern Ireland or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses which shall include any incurred as a result of an indemnity or warranty given, or to be given, by the University to a Replacement Supplier or sub-contractor.
“Incumbent Employees”	employees of the Incumbent Employer whose contracts of employment transfer with effect from the Effective Date to the Supplier or Sub-Contractor by virtue of the application of TUPE.
“Incumbent Employer”	has the meaning given to it in the Specified Terms.
“Other Employee”	an individual (who is not a Relevant Employee) engaged or employed by the Supplier or Sub-Contractor prior to the Service Transfer Date and/or whose contract of employment is claimed, or is deemed, to have effect after the Service Transfer Date as if originally made

between the University or Replacement Supplier and that individual as a result of the application of TUPE, including any employee of the Supplier or Sub-Contractor who objects to a Relevant Transfer.

“Pension Protection Regulations”		means the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255), the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No 246), the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) (SR 2006 No 177), the Transfer of Employment (Pension Protection) Regulations (Northern Ireland) 2005 (SR 2005 No 94) and the Electricity (Protected Persons) Pensions Regulations (Northern Ireland) 1992 (SR 1992 No 93).
“Relevant Employees”		those employees identified on the Supplier's Final Staff List whose contracts of employment will transfer with effect from the Service Transfer Date to the University or a Replacement Supplier by virtue of the application of TUPE.
“Relevant Transfer”		a transfer to which TUPE applies.
“Supplier's Staff List”	Final	the list of all the Supplier's Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services before the Service Transfer Date.
“Supplier's Provisional List”	Staff	the list prepared and updated by the Supplier of all the Supplier'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 the preparation of the list.
“Service Transfer Date”		the date on which the Services (or any part of the Services), transfer from the Supplier or Sub-Contractor to the University or any Replacement Supplier.
“Staffing Information”		in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the University may reasonably request including the Employee Liability Information, details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, the current pension provision for such persons and the amount of time spent on the provision of the Services by such persons.
“Subsequent Transfer”		has the meaning given to it in paragraph 3.1 below.
“2008 Act”		means the Pensions (No.2) Act (Northern Ireland) 2008.

1.2 For the avoidance of doubt, terms defined in the General Conditions and Schedule 1 shall have the same meaning when used in this Schedule, unless otherwise defined herein.

2. TRANSFER OF EMPLOYEES TO THE SUPPLIER

2.1 The parties acknowledge that, pursuant to TUPE, the contracts of employment of the Incumbent Employees together with any collective agreement relating to such employees will have effect from and including the Effective Date as if originally made between the Supplier or Sub-Contractor and the Incumbent Employees (or between the Supplier or Sub-Contractor and the relevant trade union, as the case may be) except (subject to paragraph 4) in so far as such contracts and such agreements relate to benefits for old age, invalidity or survivors under

any occupational pension scheme or to any Incumbent Employee who objects under Regulation 4(7) of TUPE.

- 2.2 The Supplier or any relevant Sub-Contractor shall assume responsibility for all remuneration, benefits, outgoings and emoluments in respect of the Incumbent Employees from and including the Effective Date.
- 2.3 The Supplier will provide and shall procure that any Sub-Contractor shall provide the Incumbent Employer with the information necessary to enable the Incumbent Employer to discharge its or their obligation to inform and consult under Regulation 13 of TUPE about the transaction contemplated by this agreement. The Supplier will provide reasonable assistance to enable compliance with any requirement to inform and consult to take place at least twelve weeks in advance of the Effective Date to allow meaningful consultation to take place.
- 2.4 Without prejudice to paragraph 2.3 above, the Supplier shall immediately on request by the University or the Incumbent Employer provide details of any measures that the Supplier or any Sub-Contractor envisages it will take in relation to any Incumbent Employees including any proposed changes to terms and conditions of employment. If there are no measures, the Supplier shall give confirmation of that fact.
- 2.5 The Supplier shall be liable for and indemnify and keep indemnified the University and the Incumbent Employer in respect of any Employment Liabilities which may be incurred by the University or the Incumbent Employer arising from or as a consequence of:
- (a) the employment or termination of employment of the Incumbent Employees and the employment and/or engagement or termination of employment and/or engagement of any other Supplier's Personnel, including without limitation, all wages, benefits, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date; and
 - (b) any act or proposal by the Supplier or any Sub-Contractor prior to or following the Effective Date which amounts to a repudiatory breach of contract as referred to in Regulation 4(11) of TUPE and/or to make a substantial change in working conditions of any Incumbent Employee to the material detriment of that Incumbent Employee. For the purposes of this sub-paragraph the expressions "repudiatory breach", "substantial change" and "material detriment" shall have the meanings ascribed to them for the purposes of Regulation 4(9) and 4(11) of TUPE; and/or
 - (c) any failure of the Supplier or Sub-Contractor to provide the information and assistance referred to in paragraph 2.3 and 2.4 above and/or failure to comply with its obligations under regulations 13 and/or 14 of TUPE; and
 - (d) anything done or omitted to be done by the Supplier or any sub-contractor in respect of any of the Incumbent Employees whether before or after the Effective Date; and
 - (e) any failure of the Supplier or any Sub-Contractor to comply with obligations pursuant to TUPE.

3. EMPLOYMENT EXIT PROVISIONS

- 3.1 This agreement envisages that subsequent to its commencement, the identity of the Supplier of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, in part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the University or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date. Such change in the identity of the supplier of the Services (or any part of the Services) shall be a "Service Transfer". Accordingly, in the event of a Service Transfer, the provisions in paragraph 3.10 shall apply.

- 3.2 The Supplier shall and shall subject to compliance with Data Protection Legislation:
- (a) within 20 Working Days of the earliest of:
 - (a) receiving notice of full or partial termination of this agreement;
 - (b) 12 months before the expiry of this agreement;
 - (c) receipt of a notification from the University of a Service Transfer or proposed Service Transfer or otherwise;
 - (d) and in any event, as reasonably requested by the University, provide in respect of the Supplier's Personnel, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the University, including information as to the application of TUPE to any employees and it will provide an updated Supplier's Provisional Staff List and updated Staffing Information at such intervals as are reasonably requested by the University. The Supplier shall notify the University of any material changes to this information as and when they occur.
- 3.3 At least 8 weeks prior to the Service Transfer Date, the Supplier shall and shall procure that any Sub-Contractor shall prepare and provide to the University and/or, at the direction of the University, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's Personnel named are Relevant Employees.
- 3.4 The University shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information ("TUPE Information") for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5 The Supplier warrants to the University that the TUPE Information will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.
- 3.6 The Supplier shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 3.7 12 months prior to termination of this agreement the Supplier agrees that it will not, and agrees to procure that any Sub-Contractor will not, other than in the ordinary course of business, 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 Supplier's Provisional Staff List and/or Supplier's Final Staff List (as appropriate) and will not, without the prior written consent of the University (such consent not to be unreasonably withheld or delayed):
- (a) increase the total number of employees listed on the Supplier's Provisional Staff List or Supplier's Final Staff List (as appropriate) save for fulfilling assignments and projects previously scheduled and agreed with the University;
 - (b) make, propose or permit any material changes to the terms and conditions of employment of any employees listed on the Supplier's Provisional Staff List or Supplier's Final Staff List (as appropriate);
 - (c) increase the proportion of working time spent on the Services (or the relevant part) by any of the Supplier's Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - (d) 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 Supplier's Provisional Staff List or Supplier's Final Staff List (as appropriate);

- (e) replace any Supplier's Personnel listed on the Supplier's Provisional Staff List or Supplier's Final Staff List (as appropriate) or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on such lists save for:
 - (a) the execution of assigned operations as detailed in 3.7(a) and 3.7(c); and/or
 - (b) replacing voluntary resignations or staff terminated by due and fair disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces; and
 - (f) the Supplier will promptly notify the University or as appropriate will procure that any Sub-Contractor will promptly notify the University or, at the direction of the University, the Replacement Supplier of any notice to terminate employment given by the Supplier or any Sub-Contractor or received from any persons listed on the Supplier's Provisional Staff List or Supplier's Final Staff List (as appropriate) regardless of when such notice takes effect.
- 3.8 At least seven days before the Service Transfer Date, the Supplier will provide and shall procure that a Sub-Contractor shall provide to the University or to any Replacement Supplier as directed by the University, in respect of each person on the Supplier's Final Staff List who is a Relevant Employee:
- (a) the most recent month's copy pay slip data;
 - (b) details of cumulative pay for tax and pension purposes;
 - (c) details of cumulative tax paid;
 - (d) tax code;
 - (e) details of any voluntary deductions from pay; and
 - (f) bank/building society account details for payroll purposes.
- 3.9 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 3.10 In connection with a Relevant Transfer, the Parties agree that the Supplier shall perform and discharge all its obligations in respect of all the Relevant Employees and their representatives. The Supplier shall be liable for and indemnify and keep indemnified the University and any Replacement Supplier and any sub-contractor of the Replacement Supplier in respect of any Employment Liabilities which may be incurred by the University and/or any Replacement Supplier arising from or as a consequence of:
- (a) the Supplier's failure to perform and discharge any such obligation; the employment or termination of employment of the Relevant Employees including without limitation, all wages, benefits, holiday pay (including accrued holiday entitlement up to the Service Transfer Date), bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise payable in respect of any period or before the Service Transfer Date;
 - (b) any act or omission by the Supplier on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;
 - (c) the provision of, or proposal by the Supplier or any Sub-Contractor to offer any change to any benefit, term or condition or working condition of any Supplier's Personnel on the Supplier's Provisional Staff List or Supplier's Final Staff List (as

appropriate) arising before the Service Transfer Date save where such changes have been made with the prior written consent of the University pursuant to paragraph 3.7;

- (d) any claim made by or in respect of any Supplier Personnel other than a Relevant Employee for which it is alleged that the University or any Replacement Supplier may be liable by virtue of this agreement and/or TUPE;
 - (e) any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under Regulation 11, 13 or 14 of TUPE, or in respect of an award of compensation under Regulation 15 of TUPE except to the extent that the liability arises from the University or a Replacement Supplier's failure to comply with Regulation 13(4) of TUPE; and
 - (f) any statement communicated to or action done by the Supplier or any Sub-Contractor to, or in respect of, any Relevant Employee before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the University.
- 3.11 The Supplier shall indemnify the University and any Replacement Supplier in respect of any claims arising from any act or omission of the Supplier in relation to any other Supplier Personnel who is not a Relevant Employee during any period whether before or after.
- 3.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.1 to paragraph 3.10 and paragraph 4, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the University in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.13 Despite paragraph 3.11, it is expressly agreed that the parties may by agreement rescind or vary any terms of this contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.
- 3.14 In the event of a Subsequent Transfer which is not a Service Transfer, the following provisions shall apply:
- (a) the University or the Replacement Supplier can, at its discretion, make to any of the employees listed on the Supplier's Provisional Staff List or any Supplier's Personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
 - (b) when the offer has been made by the University or Replacement Supplier and accepted by an employee or worker, the Supplier shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Supplier which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
 - (c) if the employee does not accept an offer of employment made by the University or Replacement Supplier, the employee shall remain employed by the Supplier and all claims in relation to the employee shall remain with the Supplier; and
 - (d) if the University or Replacement Supplier does not make an offer to any employee on the Supplier's Provisional Staff List or any Supplier's Personnel, then the employee and all claims in relation to that employee remains with the Supplier.

4. PENSIONS

4.1 The Supplier shall procure that it and/or any Sub-Contractor shall provide benefits of at least the minimum required as prescribed under the Pension Protection Regulations for and in respect of service from and including the Effective Date for Incumbent Employees. For the avoidance of doubt and in accordance with the Pension Protection Regulations the Supplier shall procure that it and/or any Sub-Contractor shall offer Incumbent Employees membership of (at the Supplier's option):

- (a) the Supplier's or any Sub-Contractor's occupational defined benefit or hybrid scheme, whereby the scheme must provide benefits worth at least the equivalent in present value of 6 percent of the Incumbent Employees' pensionable pay (excluding the Incumbent Employees' own contributions) for each Incumbent Employee. The Incumbent Employee will not be required to contribute more than 6 per cent of pensionable pay; or
- (b) an occupational money purchase scheme or a stakeholder arrangement where it is up to each Incumbent Employee to decide on the amount of his or her contributions which the Supplier or any Sub-Contractor will then be required to match, up to 6 per cent of each Transferring Employee's or Incumbent Employee's pensionable pay

4.2 Claims from Employees or Trade Unions

The Supplier hereby indemnifies the University and any Replacement Supplier and, in each case, their sub-contractor from and against any Employment Liabilities incurred by, awarded against or agreed to be paid by the University and/or any Replacement Supplier arising from claims by Incumbent Employees or Relevant Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Incumbent Employees and Relevant Employees which:

- (a) relate to pension rights in respect of periods of employment on and after the Effective Date until the Service Transfer Date or the date of termination or expiry of this agreement; or
- (b) arise out of the failure of the Supplier or any Sub-Contractor to comply with the provisions of this paragraph 4 before the Service Transfer Date or the date of termination or expiry of this agreement.

4.3 Pension issues on Expiry or Termination

The Supplier shall and shall procure that any Sub-Contractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on the Service Transfer Date or on the expiry or termination of this agreement (including without limitation identification of the Relevant Employees);
- (b) promptly provide to the University such documents and information which the University may reasonably request in advance of the Service Transfer Date or expiry or termination of this agreement; and
- (c) fully co-operate (and procure that the trustees of every Supplier's scheme shall fully co-operate) with the reasonable requests of the University relating to any administrative tasks and arrangements or agreements to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on the Service Transfer Date or on the expiry or termination of this agreement.

4.4 Supplier's Acknowledgment

The Supplier acknowledges that any costs and additional pension contributions arising from complying with the Automatic Enrolment Requirements during the period of this agreement in respect of any Incumbent Employees or new employees are the sole responsibility of the Supplier and any Sub-Contractor. The Supplier undertakes to comply and to procure that any Sub-Contractor comply with the Automatic Enrolment Requirements.

- 4.5 The provisions of paragraph 4 shall be directly enforceable by an affected employee against the Supplier or any relevant Sub-Contractor.

PART 1: TRANSFERRING AND INCUMBENT EMPLOYEES

Transferring Employees	Incumbent Employees

SCHEDULE 9- COMMERCIALLY SENSITIVE INFORMATION

[DRAFTING NOTE: IF APPLICABLE, TO BE INSERTED FROM THE SUPPLIER'S DECLARATIONS HELD ON THE TENDER PORTAL. IF THIS SCHEDULE DOES NOT APPLY TO THIS AGREEMENT, PLEASE ENSURE THAT YOU REMOVE IT FROM THE "APPLICABLE SCHEDULES" SECTION IN THE SPECIFIED TERMS]

SCHEDULE 10- KEY PERSONNEL

1. GENERAL

- 1.1 The Supplier shall appoint the persons named as such in the Tender as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by the Supplier as being key to successful implementation, operation, or performance of the Services and/or the provision of Supplies, for such time as they are required to fulfil their allocated role. The Key Personnel shall have the authority to act on behalf of the Supplier on the matters for which they are expressed to be responsible.
- 1.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the University;
 - (b) the person is on long-term leave (including sick leave and sabbatical leave);
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the University's satisfaction;
 - (d) the person resigns from their employment with the Supplier; or
 - (e) the Supplier obtains the prior written consent of the University.
- 1.3 The Supplier shall inform the University of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The University shall be entitled to interview any such person and may object to any such proposed appointment within ten (10) Working Days of meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 1.4 The Supplier shall ensure that the role of its Key Personnel is not vacant (in terms of a permanent representative) for more than five (5) Working Days. Any replacement shall be as, or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the University becoming aware of the role becoming vacant.
- 1.5 The University may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 1.6 If the Supplier replaces the Key Personnel as a consequence of this schedule, the cost of effecting such replacement shall be borne by the Supplier.

SCHEDULE 11 – DATA PROCESSING PARTICULARS

PART 1 – PROCESSING BY THE SUPPLIER AS A PROCESSOR

<p>The subject matter and duration of the processing</p>	<p><i>Please explain in this section, what the services or supplies actually are, why personal data is needed to perform or provide such services or supplies and how long the processing will take place for.</i></p> <p><i>E.g. this might relate to the provision of car parking services and the contractor needs personal data relating to university staff, students or visitors using the car park in order to follow up on unpaid parking fees and the duration will only be for the length of the contract.</i></p> <p><i>Example wording below:</i></p> <p><i>The processing relates to the provision of [Insert product or service] to the Data Subjects. The Processor party will support the Controller to arrange [insert description of processor activity]. The Processing will continue for as long as the arrangement is in place and subject to each party's respective data retention requirements.</i></p> <p><i>[D.N. The duration of the processing should be for at least the duration of the Services or Supplies provision]</i></p>
<p>The nature and purpose of the processing</p>	<p><i>Please outline here, how the data is being processed, the particular ways this will be done.</i></p> <p><i>Following on from the above example, a car parking provider might store student number plates on its system when clamping a car and only store such information in order to chase payment of the parking fine.</i></p> <p><i>Example wording below:</i></p> <p><i>The nature of the processing is the provision of [Insert product or service] to the data subject in connection with providing [Insert details of how the data subjects information will be used.]</i></p>
<p>The type of personal data being processed</p>	<p><i>This should include details of personal data shared with the processor under this agreement.</i></p> <p><i>E.g. Name, contact details, DOB, bank account details, health information, salary information etc.</i></p>
<p>The categories of data subjects</p>	<p><i>This should include details of types of data subjects whose data you share with the processor under this agreement.</i></p> <p><i>E.g. customers, employees, students, staff, visitors to the university etc.</i></p>
<p>Permitted Purposes</p>	<p><i>This should set out to the reasons for the processing of Personal Data under this Agreement.</i></p> <p><i>E.g. Support to arrange the supply of [X] products and related order management information.</i></p>

Permitted Recipients	<p><i>This should set out to who the permitted recipients of Personal Data, for the permitted processing purposes are under this Agreement (if any).</i></p> <p><i>E.g. list any approved sub-contractors.</i></p>
Territory of Permitted Recipient	<p><i>D.N This should set out the territory of the Supplier's permitted recipients of the University Personal Data (if any) and the transfer mechanism adopted by the Supplier to transfer Personal Data to such permitted recipients when the territory does not have an adequacy regulation from the UK</i></p> <p>[It is noted that this territory has an adequacy regulation from the UK Secretary of State pursuant to section 17A of the Data Protection Act 2018 and as such any transfer of Personal Data by the Supplier is permitted under Article 45 of the UK GDPR.]</p> <p><u>OR</u></p> <p>[It is noted that this territory is an Unauthorised Territory. The parties shall enter the SCCs and do all such acts as required to legitimise any transfer of Personal Data.]</p>
Territory of Supplier	<p><i>D.N This should set out the territory of the Supplier and the University should check whether this territory has an adequacy regulation from the UK before proceeding to transfer any Personal Data to the Supplier. Delete the statement below which does not apply.</i></p> <p>[It is noted that this territory has an adequacy regulation from the UK Secretary of State pursuant to section 17A of the Data Protection Act 2018 and as such any transfer of Personal Data from the University to the Supplier is permitted under Article 45 of the UK GDPR.]</p> <p><u>OR</u></p> <p>[It is noted that this territory is an Unauthorised Territory. The parties shall enter the SCCs and do all such acts as required to legitimise any transfer of Personal Data.]</p>

PART 2 - PROCESSING BY THE UNIVERSITY AS A PROCESSOR

<p>The subject matter and duration of the processing</p>	<p><i>Please explain in this section, what the services or supplies actually are, why personal data is needed to receive services or supplies by the University and how long the processing will take place for.</i></p> <p><i>E.g. this might relate to the University having to process the supplier's contact and business information for contract administration, invoicing and ongoing communication, or for allowing the supplier to access the University's premises or IT systems etc.</i></p> <p><i>Example wording below:</i></p> <p><i>The processing relates to the receipt of [Insert product or service] to the Data Subjects. The Processor party will support the Controller to arrange [insert description of processor activity]. The Processing will continue for as long as the arrangement is in place and subject to each party's respective data retention requirements.</i></p> <p><i>[D.N. The duration of the processing should be for at least the duration of the Services or Supplies provision]</i></p>
<p>The nature and purpose of the processing</p>	<p><i>Please outline here, how the data is being processed, the particular ways this will be done.</i></p> <p><i>Following on from the above example, the University may need to store personal data of the supplier on its system for contract administration, invoicing and ongoing communication, or for allowing the supplier to access the University's premises or IT systems</i></p> <p><i>Example wording below:</i></p> <p><i>The nature of the processing is the provision of [Insert product or service] to the data subject in connection with providing [Insert details of how the data subjects information will be used.]</i></p>
<p>The type of personal data being processed</p>	<p><i>This should include details of personal data shared with the processor under this agreement.</i></p> <p><i>E.g. Name, contact details, DOB, bank account details, health information, salary information etc.</i></p>
<p>The categories of data subjects</p>	<p><i>This should include details of types of data subjects whose data you share with the processor under this agreement, e.g. employees.</i></p>
<p>Permitted Purposes</p>	<p><i>This should set out to the reasons for the processing of Personal Data under this Agreement.</i></p> <p><i>E.g. Support to receive the supply of [X] products and related order management information.</i></p>
<p>Permitted Recipients</p>	<p><i>This should set out to who the permitted recipients of Personal Data, for the permitted processing purposes are under this Agreement (if any).</i></p>

		<i>E.g. list any approved sub-contractors and third party processors appointed by the University under this agreement.</i>
Territory of Permitted Recipient		<p><i>D.N This should set out the territory of the University's permitted recipients of the Supplier Personal Data (if any) and the transfer mechanism adopted by the University to transfer Personal Data to such permitted recipients when the territory does not have an adequacy regulation from the UK</i></p> <p>[It is noted that this territory has an adequacy regulation from the UK Secretary of State pursuant to section 17A of the Data Protection Act 2018 and as such any transfer of Personal Data from the University to the Supplier is permitted under Article 45 of the UK GDPR.]</p> <p><u>OR</u></p> <p>[It is noted that this territory is an Unauthorised Territory. The parties shall enter the SCCs and do all such acts as required to legitimise any transfer of Personal Data.]</p>

PART 3 – PROCESSING AS JOINT CONTROLLERS

The subject matter and duration of the processing	<i>E.g. the processing relates to [identify joint controller subject matter]. The processing will continue for as long as the arrangement is in place and subject to the respective data retention requirements of the Controllers.</i>
The nature and purpose of the processing	<i>E.g. the nature of the processing is [identify joint controller activities] [insert details of how the data subjects information will be used].</i>
The type of personal data being processed	<i>This should include details of personal data accessed by the joint controllers.</i> <i>E.g. Name, contact details, DOB, bank account details, health information, salary information etc.</i>
The categories of data subjects	<i>This should include details of types of data subjects in relation to who the parties act as joint controllers</i>
Permitted Purposes	<i>This should set out to the reasons for the processing of Personal Data under this Agreement.</i> <i>E.g. Support to receive the supply of [X] products and related order management information.</i>
Permitted Recipients	<i>This should set out to who the permitted recipients of Personal Data, for the permitted processing purposes are under this Agreement (if any).</i> <i>E.g. list any approved sub-contractors and third party processors appointed by the parties under this agreement.</i>
Territory of Permitted Recipient	<i>D.N This should set out the territory of the permitted recipients (if any) and the transfer mechanism adopted by the parties to transfer Personal Data to such permitted recipients when the territory does not have an adequacy regulation from the UK</i> [It is noted that this territory has an adequacy regulation from the UK Secretary of State pursuant to section 17A of the Data Protection Act 2018 and as such any transfer of Personal Data from is permitted under Article 45 of the UK GDPR.] <u>OR</u> [It is noted that this territory is an Unauthorised Territory. The parties shall enter the SCCs and do all such acts as required to legitimise any transfer of Personal Data.]

SCHEDULE 12 – VARIATION

1. DEFINITIONS

- 1.1 In this Schedule, and wherever used elsewhere in the Agreement, the following definitions shall apply:

“Expert”	has the meaning given to it in paragraph 4.1 of this Schedule 12.
“Variation”	has the meaning given to in in the Specified Terms.
“Variation Request”	has the meaning given to it in paragraph 3.1 of this Schedule 12.
“Variation Response”	has the meaning given to it in paragraph 3.3 of this Schedule 12.

- 1.2 For the avoidance of doubt, terms defined in the General Conditions shall have the same meaning when used in this Schedule, unless otherwise defined herein.

2. GENERAL PRINCIPLES

- 2.1 Throughout the Term, the University may need to make a Variation to the Supplies and/or Services ordered (as applicable), provided that such variation does not amount to a material change to the Agreement or is not in contravention of any applicable law, including the Act and Regulations.
- 2.2 The University and the Supplier agree to such amendments, subject to the University's compliance with the requirements of this Schedule 12 and that any change to the Charges shall be calculated in accordance with the price adjustment mechanism set out in the Specified Terms.

3. PROCEDURE

- 3.1 When the University requires a Variation, it shall issue a written request to the Supplier in accordance with this paragraph 3 (**“Variation Request”**).
- 3.2 Each Variation Request shall contain the following details:
- 3.2.1 the title of the Variation;
 - 3.2.2 the date of the Variation Request;
 - 3.2.3 full details of the change to the Supplies and/or Services (as applicable), be that an increase or decrease to the Supplies and/or Services required, and where applicable any specifications;
 - 3.2.4 a timetable for implementation, together with any proposals for acceptance of the Variation Request;
 - 3.2.5 details of the likely impact, if any, of the Variation Request on other aspects of the Agreement, including (but not limited to) Schedule 3 (Specification), Schedule 4 (Supplier's Solution), and Schedule 5 (Charges and Payment);
 - 3.2.6 a request for the details of any change to the Charges, as calculated in accordance with the mechanism set out in the Specified Terms; and
 - 3.2.7 any other details required in accordance with the Specified Terms.

- 3.3 The Supplier shall provide a written response to the Variation Request within 10 Working Days of receipt of the Variation Request ("**Variation Response**").
- 3.4 Each Variation Response shall include the following:
- 3.4.1 details of the change to the Charges resulting from the Variation Request, be that an increase or decrease, which shall include a breakdown of how this has been calculated by the Supplier in accordance with the price adjustment mechanism set out in the Specified Terms;
 - 3.4.2 in the event that the Variation Request shall give rise to an increase in Supplies and/or Services ordered, confirmation that the Supplier can meet such change; and
 - 3.4.3 provision for signature by the University and the Supplier.
- 3.5 The University shall evaluate the Variation Response following receipt and, as appropriate:
- 3.5.1 request further information from the Supplier;
 - 3.5.2 accept the Variation Response, arrange for two counterparts of the Variation Response to be signed by the University and return one original counterpart to the Supplier; or
 - 3.5.3 reject the Variation Response.
- 3.6 If the University accepts the Variation Response, such Variation Response together with the Variation Request shall constitute an amendment to the Agreement.
- 3.7 In the event that the University rejects the Variation Response or the parties can otherwise not agree the terms of the Variation Request, the Supplier shall continue to perform its obligations in accordance with the Agreement without variation.
- 3.8 Any work, additional Supplies, or Services undertaken by the Supplier or the Supplier's Personnel which has not been authorised by an accepted Variation Response shall be undertaken entirely at the expense and liability of the Supplier.

4. EXPERT

- 4.1 In the event that the parties fail to agree the terms of the Variation Request and Variation Response in accordance with this Schedule 12, the University shall request Chartered Accountants Ireland to appoint an appropriate expert accountant to make a decision ("**Expert**"). For the avoidance of doubt, the dispute resolution procedure at clause 17 of the General Conditions shall not apply to this Schedule 12.
- 4.2 The Expert shall be required to prepare a written decision, including reasons, and give notice (including a copy) of the decision to the parties within a maximum of one month following the matter being referred to the Expert.
- 4.3 If the Expert is unwilling or becomes incapable of acting, or does not provide the decision within the time required by paragraph 4.2 above, then:
- 4.3.1 either party may apply to Chartered Accountants Ireland to discharge the Expert and to appoint a replacement Expert within the relevant expertise; and
 - 4.3.2 the provisions of this paragraph 4 shall apply to the replacement Expert as if they were the first Expert appointed.
- 4.4 All matters under this paragraph 4 must be conducted, and the Expert's decision shall be, written in the English language.

- 4.5 The parties shall be entitled to make submissions to the Expert in writing 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.
- 4.6 Each party shall supply the other party with all information and provide access to all documentation and personnel as the other party may reasonably require to make a submission under paragraph 4.5 as soon as reasonably practicable.
- 4.7 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the conditions of the subject Variation Request or Variation Response in dispute, which may include any issuing involving the interpretation of a provision of the Agreement, their jurisdiction to determine the matters and issues referred to them and/or their terms of reference. The Expert's written decision on the matters referred to them shall be final and binding on the parties in absence of manifest error or fraud.
- 4.8 Each party shall bear its own costs in relation to the reference to the Expert.
- 4.9 The costs of the Expert shall be allocated between the parties in such proportions as the Expert determines to be appropriate, and such determination shall be set out in the expert's written decision.
- 4.10 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert, subject to any applicable laws.
- 4.11 Each party shall act reasonably and co-operate to give effect to the provisions of this paragraph 4 and otherwise do nothing to hinder or prevent the Expert from reaching their determination.