

Dated

20[XX]

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UNIVERSITY OF ULSTER (1)

and

[XXXXX] (2)

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AGREEMENT FOR THE PROVISION OF SERVICES

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## **Conditions of Contract for Services ("Terms and Conditions")**

### **1 Interpretation**

1.1 In these Terms and Conditions the following words will have the following meanings:

"Agreement"	means the agreement between the Supplier and the Customer for the supply and purchase of Services which comprises these Terms and Conditions together with any or all of the following, if applicable: (a) the Purchase Order; (b) the Invitation to Tender/Specification; (c) the Tender; or where none of the above documents apply, any instruction issued by the Customer to the Supplier to supply Services;
"Commencement Date"	means, as applicable: (a) the date of commencement of the Agreement as set out in the ITT; or (b) the date the Purchase Order is issued by the Customer; or (c) where there is no ITT and no Purchase Order is issued, the date that the Customer places an order for the Services with the Supplier;
"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;
"Charges"	the price of the Services as stated in the Purchase Order, Tender, or Customer's other form of instruction to supply Services, as applicable;
"Customer"	means the University of Ulster (branded as Ulster University) of Cromore Road, Coleraine, County Londonderry, BT52 1SA;
"Data Processing Schedule"	means the data processing schedule set out in the ITT;
"Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time in the UK including: (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 (including without limitation, the privacy of electronic communications).

“EEA”	the European Economic Area;
“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.
“Environmental Policy”	the Customer’s environmental sustainability policy statement made available on its website from time to time at <a href="https://www.ulster.ac.uk/finance/visitors/supplying/sustainable-procurement">https://www.ulster.ac.uk/finance/visitors/supplying/sustainable-procurement</a> or any other environmental policy notified by the Customer to the Supplier from time to time;
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“Invitation to Tender (ITT)”	means the invitation sent by the Customer to a potential Supplier to submit a Tender and this definition shall include any invitation to quote (ITQ) issued by the Customer to a potential Supplier where evaluation is to be conducted solely on price;
“Key Personnel”	any persons specified as such in the Purchase Order or Tender (as the case may be), or otherwise notified by the Customer to the Supplier in writing;
“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), regulations and consents necessary from time to time for the performance of the Services.
“Party/Parties”	the Supplier and/or the Customer (as appropriate);
“Premises”	has the meaning given in the Invitation to Tender, Purchase Order, or Customer’s other form of instruction to supply Services, as applicable, or if such term is not defined it will be the address where the Services are provided;
“Purchase Order”	means the Customer’s order for Services which has a unique PO number, and details the Services to be supplied by the Supplier to the Customer in accordance with the terms of the Agreement;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” will apply);
“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;

“Services”	means the services to be provided by the Supplier to the Customer under the Agreement as specified in the Invitation to Tender, Specification, Tender or Purchase Order (as applicable) or, where no such documents exist, as detailed in the instructions issued by the Customer to the Supplier to supply the Services;
“Specification”	means any specification for the Services produced by the Supplier and agreed with the Customer; or supplied to the Supplier by the Customer including any specification contained in the Invitation to Tender, Purchase Order or Customer’s other form of instruction to supply Services, as applicable, and any documents referred to therein which set out the description, quality and price of the Services;
“Staff”	means all persons employed by the Supplier to perform its obligations under the Agreement together with the Supplier’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Agreement;
“Supervisory Authority”	the relevant supervisory authority in the territory where a party to these Terms and Conditions are established (other than the Commissioner):
“Staff Vetting Procedures”	means the Customer’s procedures for the vetting of personnel as advised to the Supplier by the Customer;
“Supplier”	means the person, firm or company that enters into the Agreement with the Customer;
“Tender”	means the Supplier's written offer in response to the Invitation to Tender to supply the Services;
“Term”	means: <ul style="list-style-type: none"> <li>(a) where the Agreement is for the one off provision of Services, the period commencing on the Commencement Date and ending on the date that the Services are complete and the Supplier has performed all of its obligations in accordance with the Agreement, unless the Agreement is terminated earlier in accordance with these Terms and Conditions; or</li> <li>(b) where the Agreement is for the supply of Services over a fixed term duration as set out in the ITT, the period commencing on the Commencement Date and ending on the expiry of the fixed term period set out in the ITT including any extension periods that may be exercised by the Customer at its option as set out in the ITT, unless the Agreement is terminated earlier in accordance with these Terms and Conditions;</li> </ul>
“UK GDPR”	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
“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;

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in Northern Ireland.

- 1.2 Where a capitalised word is not defined in these Terms and Conditions it will have the meaning given to it in the Invitation to Tender or Purchase Order.
- 1.3 In these Terms and Conditions, unless the context otherwise requires:
  - 1.3.1 references to numbered clauses are references to the relevant clause in these Terms and Conditions;
  - 1.3.2 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
  - 1.3.3 the headings to the clauses of these Terms and Conditions are for information only and do not affect the interpretation of the Agreement;
  - 1.3.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
  - 1.3.5 where the word ‘including’ is used in these Terms and Conditions, it will be understood as meaning ‘including without limitation’.

## **2 Basis of Agreement**

- 2.1 Issue of a Purchase Order by the Customer or, where a Purchase Order is not issued, placement of an order for Services by the Customer in any other format will constitute acceptance by the Customer of the offer contained in the Supplier's Tender or the Supplier's quotation, as the case may be, for the supply and purchase of Services on the basis of the Agreement.
- 2.2 Any variation to the provisions of the Agreement (including any special terms and conditions agreed between the Parties) will be inapplicable unless in writing and signed by a duly authorised representative of each Party.

### **2A Term**

- 2A.1 The Agreement shall take effect on the Commencement Date and shall continue for the Term.

## **3 Supply of Services**

- 3.1 In consideration of the amounts due under the Agreement, the Supplier will, from the Commencement Date; provide the Services to the Customer for the Term, in accordance with the Agreement.
- 3.2 The Supplier warrants that at the Commencement Date it has all Necessary Consents in place to provide the Services and shall ensure that it maintains all Necessary Consents during the Term. The Customer shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 3.3 In providing the Services, the Supplier will:
  - 3.3.1 co-operate with the Customer in all matters relating to the Services, and comply with all

the Customer's instructions;

- 3.3.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 3.3.3 meet any performance dates for the Services specified in the Purchase Order, ITT or Customer's other form of instruction to supply Services;
  - 3.3.4 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
  - 3.3.5 ensure that the Services will conform with all descriptions and specifications set out in the Specification (if applicable);
  - 3.3.6 comply with all applicable laws; and
  - 3.3.7 provide all equipment, tools and vehicles and such other items as are required to provide the Services.
- 3.4 If the Supplier provides Services at or from the Customer's Premises, on completion of the Services, or termination or expiry of the Agreement (whichever is the earlier) the Supplier will vacate the Customer's Premises, remove its plant, equipment and unused materials and will clear away from these Premises all rubbish arising out of the Services and leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.
- 3.5 The Customer may inspect and examine the manner in which the Supplier supplies the Services, at the Premises, during normal business hours, on reasonable notice.

#### **4 Representations and Warranties**

- 4.1 The Supplier warrants that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement.

#### **5 Variation of the Services**

- 5.1 The Customer reserves the right to vary the Services required, should this at any time become necessary. In the event of any variation to the scope of the Services, the Charges will be subject to fair and reasonable adjustment to be agreed between the Customer and the Supplier.

#### **6 Charges and Payment**

- 6.1 The Charges for the Services will be as set out in the Purchase Order, Tender or Customer's other form of instruction to supply the Services (as applicable) and will be the full and exclusive remuneration to the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges will include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.2 The Supplier will invoice the Customer as specified in the ITT or, where there is no ITT or invoicing arrangements are not referred to in the ITT, on completion of the Services. Each invoice will include such supporting information required by the Customer to verify the accuracy of the invoice including but not limited to the relevant Purchase Order number and a breakdown of the Services supplied in the invoice period.
- 6.3 In consideration of the supply of the Services by the Supplier, the Customer will pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order number. Payments may be withheld or reduced by the Customer in the event of unsatisfactory performance without prejudice to the Customer's other rights and remedies under the Agreement.

- 6.4 Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Agreement, it will ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 6.5 All amounts stated are exclusive of VAT which will be charged at the prevailing rate. The Customer will, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable on the services supplied.
- 6.6 If there is a dispute as to the amount invoiced the Customer will pay the undisputed amount.
- 6.7 Any disputed amounts will be resolved through the dispute resolution procedure detailed in clause 40.
- 6.8 The Supplier will not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 15.4.

## **7 Recovery of Sums Due**

- 7.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which at any later time may become due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier will not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **8 Property**

- 8.1 If necessary, the Customer will provide the Supplier with reasonable access at reasonable times to their Premises for the purpose of providing the Services.
- 8.2 All equipment, tools and vehicles brought onto the Premises will be at the Supplier's risk.
- 8.3 Any equipment provided by the Customer for the purpose of the Agreement will remain property of the Customer and will only be used for the purpose of carrying out the Agreement, and will be returned promptly to the Customer on expiry or termination of the Agreement.
- 8.4 The Supplier will reimburse the Customer for any loss or damage to the equipment provided by the Customer (other than deterioration resulting from normal and proper use) caused by any Staff. Equipment supplied by the Customer will be deemed to be in a good condition when received by the Supplier unless the Customer is notified otherwise in writing within seven days.

## **9 Key Personnel**

- 9.1 Any Key Personnel will not be released from supplying the Services without the Agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 9.2 Any replacements to the Key Personnel will be subject to the agreement of the Customer (not to be unreasonably withheld). Such replacements will be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **10 Inspection of Premises**

- 10.1 The Supplier is deemed to have inspected the Premises before submitting its tender so as to have understood the nature and extent of the Services to be carried out and is satisfied in relation to all matters connected with the performance of its obligations under the Agreement.

## **11 Insurance**

- 11.1 The Supplier will effect and maintain (for the Term and for 1 year following the end of the Term), with a reputable insurance company, a policy or policies of insurance providing an adequate

level of cover in respect of (i) all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Agreement; (ii) public liability insurance; and (iii) professional indemnity insurance (where appropriate).

11.2 The Supplier will give to the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## **12 Intellectual Property Rights**

12.1 All intellectual property rights in any materials (i) provided by the Customer to the Supplier for the purposes of the Agreement will remain the property of the Customer; and (ii) prepared by or for the Supplier solely for delivery of the Services under the Agreement, will vest in the Customer. If, and to the extent, that such materials do not vest automatically in the Customer, the Supplier hereby assigns (with full title guarantee and free from all third party rights) all intellectual property rights in such materials to the Customer.

12.2 The Supplier hereby grants to the Customer a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any intellectual property rights that the Supplier owns, or has developed, prior to the Commencement Date of the Agreement and which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

12.3 The Supplier will indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier, its employees, agents or sub-contractors.

## **13 Assignment and sub-contracting**

13.1 The Supplier will not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part thereof. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

13.2 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Agreement, it will comply with the sub-contractor payment provision in clause 6.4.

13.3 Where the Customer has consented to the placing of sub-contracts copies of each sub-contract, will at the request of the Customer, be sent by the Supplier to the Customer as soon as is reasonably practicable.

13.4 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal will not increase the burden of the Supplier's obligations under the Agreement.

## **14 Not Used**

## **15 Cancellation and Termination**

15.1 The Customer will have the right to cancel the order for the Services, or any part of the Services, which have not yet been performed by the Supplier. The cancellation will be made in writing. Without prejudice to the generality of the foregoing, the Customer will pay the Charges (or where applicable, that part of the Charges) for Services which have been performed by the Supplier at



the date of the notice of cancellation and the costs of materials which the Supplier has purchased to fulfil the order for the Services and which cannot be used for other orders or be returned to the supplier of those materials for a refund.

- 15.2 Where the Agreement is for a fixed term, the Customer may terminate it at any time by giving to the Supplier not less than one (1) month's prior written notice, unless the fixed term of the Agreement is less than 3 months in duration in which case the Customer may terminate it at any time by giving the Supplier not less than two (2) weeks' prior written notice.
- 15.3 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if:
- 15.3.1 the Supplier is in material breach of any obligation which is not capable of remedy;
  - 15.3.2 the Supplier repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
  - 15.3.3 the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - 15.3.4 the Supplier undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988; or
  - 15.3.5 the Supplier becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 15.3.5) in consequence of debt in any jurisdiction.
- 15.4 The Supplier may terminate the Agreement if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 15.5 Termination or expiry of the Agreement will not affect the continuing rights under clauses 11, 24, 27, 28, 31, 32 and 33 and any other clause which by its nature is intended to survive termination or expiry of the Agreement.

## **16 Consequences of termination/expiry**

- 16.1 Upon termination or expiry of the Agreement, the Supplier will:
- 16.1.1 give all reasonable assistance to the incoming supplier of the Services;
  - 16.1.2 return all requested documents, information and data to the Customer as soon as reasonably practicable;
  - 16.1.3 destroy any copies of the Customer's materials or materials developed by it specifically for the Customer in its possession and certify to the Customer in writing that it has done so; and
  - 16.1.4 inform the Customer's IT service desk that the Agreement has ended in order to enable the Customer to disable any IT access granted to the Supplier and its Staff during the Term.

## **17 Variation**

- 17.1 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

## **18 Prevention of Corruption**

- 18.1 The Supplier will not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 If the Supplier, its Staff or anyone acting on the Supplier's behalf, engages in conduct prohibited by clause 18.1, the Customer may:
- 18.2.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 18.2.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of clause 18.1.

## **19 Prevention of Fraud**

- 19.1 The Supplier will take all reasonable steps, in accordance with good industry practice, to prevent fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 19.2 The Supplier will notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3 If the Supplier or its Staff commits fraud in relation to the Agreement or any other contract with the Customer, the Customer may:
- 19.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 19.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of 19.1.

## **20 The Contracts (Rights of Third Parties) Act 1999**

- 20.1 A person who is not a Party to the Agreement will have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

## **21 Health and Safety**

- 21.1 The Supplier will promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer will promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 21.2 While on the Customer's Premises, the Supplier will comply with all health and safety measures.
- 21.3 The Supplier will notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 21.4 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 Premises in the performance of its obligations under the Agreement.

21.5 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 Customer on request.

## **22 Discrimination**

22.1 The Supplier shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation in force from time to time and shall use its best endeavours to ensure that in his employment policies and practices and in the delivery of the Services required of the Supplier under the Agreement it has due regard to the need to promote equality of treatment and opportunity between:

22.2.1 persons of different religious beliefs or political opinions;

22.2.2 men and women or married and unmarried persons;

22.2.3 persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave);

22.2.4 persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);

22.2.5 persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);

22.2.6 persons of different ages; and

22.2.7 persons of differing sexual orientation.

22.2 The Supplier will take all reasonable steps to secure the observance of clause 22.1 by all Staff.

## **23 Environmental Requirements**

23.1 The Supplier will provide the Services in accordance with the Customer's Environmental Policy.

## **24 Data Protection**

24.1 In this clause 24 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.

24.2 Both Parties will comply with all requirements of Data Protection Legislation. This clause 24 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

24.3 The Parties acknowledge that for the purposes of Data Protection Legislation:

24.3.1 the Customer shall be the Controller and the Supplier shall be the Processor in respect of any Personal Data that is processed in accordance with Part 1 of the Data Processing Schedule, where applicable; and

24.3.2 the Supplier shall be the Controller and the Customer shall be the Processor in respect of any Personal Data that is processed in accordance with Part 2 of the Data Processing Schedule, where applicable.

The Data Processing Schedule sets out the scope, nature and purpose of processing by the

Processor, the duration of the processing, the types of Personal Data, categories of Data Subject and details of any cross-border transfers of Personal Data.

- 24.4 Without prejudice to the generality of clause 24.2, to the extent that either Party acts as the Controller, that Party will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Processor for the duration and purposes of the Agreement.
- 24.5 Without prejudice to the generality of clause 24.2, and to the extent that either Party acts as the Processor, that Party shall:
- 24.5.1 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 Customer shall rely on 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 Customer of this before performing the processing required by Data Protection Legislation unless such non-domestic law prohibits the Supplier from so notifying the Customer;
  - 24.5.2 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 supplies, 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); and
  - 24.5.3 without prejudice to the confidentiality obligations in clause 33 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.
- 24.6 Where the Supplier acts as the Processor it shall:
- 24.6.1 assist the Customer, at the Customer'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;
  - 24.6.2 notify the Customer without undue delay, and in any event not later than 24 hours, on becoming aware of a Personal Data Breach;
  - 24.6.3 at the written direction of the Customer, delete or return Personal Data and copies of such to the Customer on termination of the Agreement unless required by law to store the Personal Data; and
  - 24.6.4 maintain complete and accurate records and information to demonstrate its compliance with this clause 24 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes Data Protection Legislation.

- 24.7 The Supplier (or any of its sub-contractors approved in accordance with clause 13) shall not transfer Personal Data outside the UK unless the prior written consent of the Customer 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:
- 24.7.1 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 within the Data Processing Schedule;
  - 24.7.2 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 the Data Processing Schedule and must immediately inform the Customer of any change to its status;
  - 24.7.3 the transfer otherwise complies with the Data Protection Legislation. The Supplier shall provide full particulars to the Customer within the Data Processing Schedule and advise on any change to that status; and
  - 24.7.4 the Supplier complies with the reasonable instructions notified to it by the Customer in advance of the transfer of Personal Data and thereafter from time to time.
- 24.8 Without prejudice to clause 13.1, the Customer consents to the Supplier appointing only the third-party processors outlined within the Data Processing Schedule as third-party processors of Personal Data under the Agreement. 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 24 and in either case which the Supplier undertakes reflect and will continue to reflect the requirements of Data Protection Legislation. As between the Customer 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 24.8.
- 24.9 The Supplier agrees to indemnify, keep indemnified and defend at its own expense the Customer against all fines, costs, claims, damages or expenses incurred by the Customer or for which the Customer may become liable due to any failure by the Supplier or its employees, subcontractors or agents to comply with any of its obligations under this clause 24 or the Data Protection Legislation.
- 24.10 If any Personal Data Transfer between the Customer and the Supplier requires execution of SCCs in order to comply with the Data Protection Legislation (where the Customer is the entity exporting Personal Data to the Supplier located in an Unauthorised Territory), the parties will complete all relevant details in, and execute SCCs, and take all other actions required to legitimise the transfer in advance of transferring the Personal Data outside the UK.
- 24.11 If the Customer consents to appointment by the Supplier of a subcontractor or third-party processor located in an Unauthorised Territory in accordance with clause 13, then the Customer authorises the Supplier to enter into SCCs with the subcontractor. The Supplier will make the executed SCCs available to the Customer on request.

## **25 Information Assurance and Information Security**

- 25.1 The Supplier shall at all times during the Term comply with the Customer's Electronic Information Assurance and Information Security Management System Policy as set out in the

ITT or otherwise made available to the Supplier together with all other IT and cyber security policies made available to the Supplier by the Customer from time to time during the Term, as modified or updated by the Customer from time to time.

25.2 The Customer reserves the right to inspect the physical location of the Supplier's data store or processing, back-up arrangements and review at appropriate intervals to be agreed with the Supplier any information assurance processes and procedures which the Supplier has in place.

## **26 Not Used**

## **27 Freedom of Information**

27.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and will provide all necessary assistance to the Customer (at the Supplier's expense) to enable the Customer to comply with all Information disclosure obligations.

## **28 Publicity, Media and Official Enquiries**

28.1 Without prejudice to the Customer's obligations under the FOIA or the Environmental Information Regulations, neither Party will make any press announcement or publicise the Agreement or any part thereof in any way, except with the prior written consent of the other Party.

28.2 Both Parties will take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 28.1.

## **29 Security**

29.1 The Customer will be responsible for maintaining the security of its Premises in accordance with its standard security requirements. While on the Customer's Premises the Supplier will comply with all security requirements, and will ensure that all Staff comply with such requirements.

29.2 Where the Services are provided from the Suppliers premises, the Supplier will, at its own cost, comply with all security requirements specified by the Customer in writing.

## **30 Supplier's Staff**

30.1 The Customer may, by giving written notice to the Supplier:

30.1.1 refuse to admit onto, or withdraw permission to remain on, its Premises to any member of the Staff or any person employed or engaged by any member of the Staff;

30.1.2 require that a person or Staff is not to become involved in, or is to be removed from involvement in the performance of the Agreement; and

30.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered.

30.2 The Supplier will comply with any clause 30.1 notice.

30.3 If requested, the Supplier will provide a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's Premises in connection with the Agreement.

30.4 The Supplier's Staff will comply with any rules, regulations and requirements specified by the Customer.

30.5 If the Supplier fails to comply with clause 30.2 within one month of the date of the request and in the reasonable opinion of the Customer such failure may be prejudicial to the interests of the Customer then the Customer may terminate the Agreement, provided always that such termination will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Customer.

- 30.6 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with clause 30.2 will be final and conclusive.
- 30.7 The Supplier will comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

### **31 Audit**

- 31.1 The Supplier will keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Supplier will on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

### **32 Transparency**

- 32.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not confidential. The Customer will be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 32.2 Notwithstanding any other term of the Agreement, the Supplier hereby gives its consent for the Customer to publish the Agreement in its entirety, but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted, including from time to time agreed changes to the Agreement, to the general public.

### **33 Confidentiality**

- 33.1 Subject to clause 27, each Party will keep confidential and not disclose, and will procure that its employees and the employees of any sub-contractor keep confidential and do not disclose, any information of a confidential nature obtained by it (concerning the other Party) by reason of the Agreement except information which:
- 33.1.1 is in the public domain otherwise than by reason of a breach of this provision;
  - 33.1.2 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 33.1.3 was in a Party's possession without restriction as to its disclosure prior to receiving such information from the other Party;
  - 33.1.4 is required to be disclosed by law (including under the FOIA and Environmental Information Regulations), or for the purposes of audit or regulatory requirements;
  - 33.1.5 is necessary for a Party to disclose for the purposes of the performing its obligations under the Agreement (but only to the extent it is necessary to do so);
  - 33.1.6 is disclosed by a Party to its professional advisors who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Agreement;
  - 33.1.7 the other Party has given its specific express prior written consent can be disclosed;
  - 33.1.8 in the case of the Customer, is disclosed to the Department for Education, the Customer's external auditors, the Customer's third party funders (including SEUPB) and any auditors that any such parties may appoint provided that they all will comply with confidentiality provisions in respect of such disclosed information which are no less onerous than this

clause.

- 33.2 The provisions of this clause will apply during the continuance of the Agreement and after its expiry or termination howsoever arising.

### **34 Force Majeure**

- 34.1 Neither Party will have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of that Party (those circumstances excluding any industrial action occurring within the Supplier's organisation and the circumstances set out in clauses 34.2 and 34.3) ("**Force Majeure Event**"). The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than three (3) months, either Party may terminate the Agreement by written notice to the other Party.
- 34.2 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.
- 34.3 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.

### **35 Entire agreement**

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

### **35A Priority of Documents**

- 35A.1 If there is any conflict or ambiguity between the terms of any documents issued by the Customer to the Supplier, the following order of priority shall apply:

- (a) Purchase Order;
- (b) Specification;
- (c) Invitation to Tender;
- (d) Tender.

### **36 Waiver**

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

### **37 Agency, partnership etc**

- 37.1 The Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

### **38 Remedies cumulative**

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



### **39 Severance**

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

### **40 Dispute Resolution**

- 40.1 The Parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement. If the dispute cannot be resolved by the Parties within a reasonable period, the dispute may, by agreement between the Parties, be referred to a neutral adviser or mediator ("the Mediator") chosen by agreement between the Parties. If they are unable to agree a Mediator or if the chosen Mediator is unable or unwilling to act either Party will be able to apply an appropriate mediation provider to appoint a Mediator. Within 10 Working Days of appointing the Mediator, the Parties will meet with the Mediator to agree a procedure for negotiations.
- 40.2 All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings. The Parties agree to be bound by any written agreement once signed by both Parties. If the Parties fail to appoint a Mediator, or fail to reach agreement within one month of the Mediator being appointed, either Party may exercise any remedy that it has under the Agreement.

### **41 Notices**

- 41.1 Any notice to be given under this Agreement will be in writing and shall be:
- 41.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 41.1.2 sent by fax or email to the fax number or email address specified in the Purchase Order, ITT, Tender, Customer's other form of instruction to supply the Goods or the Supplier's quotation, as applicable.
- 41.2 Any notice shall be deemed to have been received:
- 41.2.1 if delivered by hand, at the time the notice is left at the proper address;
  - 41.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
  - 41.2.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 41.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 41.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **42 Governing Law and Jurisdiction**

- 42.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, will be governed by Northern Ireland law and will be subject to the exclusive jurisdiction of the Northern Ireland courts to which the Parties submit.